

EXHIBIT 1

(Part 1 of 2)

A

CONSTRUCTION AGREEMENT

Between

HPS 50TH AVENUE ASSOCIATES LLC

HUNTERS POINT SOUTH HOUSING DEVELOPMENT FUND CORPORATION

Owner,

and

MONADNOCK CONSTRUCTION, INC.

Construction Manager.

Project: 1-50 50th Avenue
Long Island City, New York

As of February 19, 2013

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CONSTRUCTION AGREEMENT

AGREEMENT, made as of the 14th day of February, 2013, by and between HPS 50th Avenue Associates LLC, having an office at 60 Columbus Circle, New York, New York 10023, Hunters Point South Housing Development Fund Corporation, having an office at 902 Broadway, 13th Floor, New York, New York, 10010 (together, "Owner"), and Monadnock Construction, Inc., as construction manager, having an office at 155 Third Street, Brooklyn, New York 11231 ("Construction Manager" or "CM").

ARTICLE 1. RECITALS

1. Owner intends to develop and construct a high-rise 37 story, 619 unit residential building (the "Project") located at 1-50 50th Avenue, Long Island City, New York 11101 (the "Project Site").
2. As set forth more fully herein, Owner intends to retain Construction Manager to provide certain pre-construction and construction services in connection with the Work and the Project (the "Services").
3. The "Work" shall consist of all labor, materials, equipment, tools, supplies and services required for the proper construction and completion of the Project. The Work shall be performed and provided through Trade Contractors in strict accordance with the Contract Documents and Legal Requirements. For purposes of this Agreement, the term "Trade Contractor" shall mean any contractor retained by Construction Manager to perform construction trade Work on the Project, together with such contractor's subcontractors of any lower tier.
4. Under separate agreement, Owner has retained Ismael Leyva Architects, P.C., as architect of record for the Project ("Architect"), together with such other design and engineering consultants as deemed necessary by Owner (collectively, the "Design Team"), to prepare plans, drawings, specifications and other construction documents for the Project (the "Construction Documents").
5. The "Contract Documents" shall consist of this Agreement, the exhibits to this Agreement, and the Construction Documents. In the event of any inconsistency or conflict between the Contract Documents, the order of precedence shall be as follows: (a) the body of this Agreement; (b) the Construction Documents; (c) the exhibits attached to this Agreement.
6. In consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner and Construction Manager agree to be bound to the terms and conditions set forth in this Agreement.

ARTICLE 2. GENERAL REQUIREMENTS

1. **Construction Manager's Duties.** Construction Manager shall supervise, administer, coordinate and manage the Work in strict accordance with the Contract Documents and Legal Requirements (as defined in Article 2.3). Construction Manager shall file for and obtain all permits (including building and site permits) and licenses necessary for the Work. Construction Manager's authority, however, is limited to the authority expressly stated in this Agreement, so that Construction Manager is prohibited from, for example, directing a Trade Contractor to perform extra work, changing or waiving a requirement of the Contract Documents, or committing Owner to an expenditure of money, without Owner's prior written approval.
2. **Relationship and Best Efforts.** Construction Manager accepts the relationship of trust and confidence established between Owner and CM by this Agreement, and recognizes the necessity of

a close working relationship with Owner. Construction Manager acknowledges Owner's intent to construct the Project at a reasonable cost, in the most expeditious manner possible (given budgetary considerations), and in strict accordance with the Contract Documents. Accordingly, Construction Manager shall use its best efforts, skill and judgment to (i) cause the Project to be completed in an expeditious and economical manner consistent with Owner's objectives, budgetary constraints and good construction practice; and (ii) furnish, using procedures and systems determined by Owner, if so directed by Owner, the business administration, coordination and superintendence necessary to complete the Work in accordance with the Contract Documents. For purposes of this Agreement, "best efforts, skill and judgment" shall mean the efforts, skill and judgment that an experienced, diligent and highly reputable construction manager of a national stature would use to fulfill an owner's objectives for a project of similar scope located in New York City.

3. Legal Requirements. Construction Manager shall comply with all federal, state and local statutes, laws, regulations, ordinances, codes and orders applicable to its Services, the Work and the Project, and shall fully satisfy the requirements of all governmental authorities, regulatory authorities, public agencies, quasi-public agencies, regulatory agencies, financing entities, utility companies and other parties with jurisdiction over the Project ("Legal Requirements").
4. LEED Certification Requirements. The Construction Manager acknowledges that Owner intends to seek Leadership in Energy and Environmental Design ("LEED") Silver certification for the Project in accordance with the rating system devised by the United States Green Building Council ("USGBC") and the Enterprise Green Communities. The Construction Manager agrees to comply with all LEED submittal requirements, as set forth more fully at Exhibit G, annexed hereto, and at the request of Owner, shall coordinate and administer such requirements with the Trade Contractors.
5. Site Logistics Plan. The Construction Manager acknowledges that it has reviewed the Site Logistics Plan for the Project, annexed hereto as Exhibit H, and agrees to comply with all requirements thereof. Owner may reasonably revise the Site Logistics Plan at any time, and the Construction Manager shall comply with such revisions at no additional cost to CM.
6. Lender. Construction Manager shall reasonably cooperate, and cause the Trade Contractors to cooperate, with the requirements of any institution providing financing, favorable tax treatment or other economic benefit in connection with the Project, including, without limitation, a savings bank, savings and loan association, commercial bank, trust company, investment bank, brokerage company, credit union, insurance company, college, university, real estate investment trust, hedge fund, pension fund or equity investor ("Lender"). This obligation may include, at Owner's reasonable request, supplying or causing to be supplied information and documentation such as change orders, contracts and purchase orders, Project Payment Applications, and the names of all parties engaged to perform the Work, as well as executing Lender's form of "will serve" or "consent" letter, annexed hereto as Exhibit K.
7. Cost. The term "Construction Cost" shall mean Owner's total contracted hard costs for all Work managed under this Agreement by Construction Manager. Construction Manager shall bring to Owner's attention any opportunities for cost savings recognized by Construction Manager in its professional judgment, and shall work with Owner to identify opportunities to reduce the costs of the Work. Construction Manager shall not accept for its own account any trade discounts, contributions or other payments from Trade Contractors, and except as previously disclosed to Owner, deal with (or recommend that Owner deal with) any firm in which Construction Manager has a financial or other interest. Construction Manager shall not undertake any activity or employment that would create a conflict of interest or compromise Construction Manager's

professional judgment or prevent Construction Manager from serving the best interests of Owner. If Construction Manager becomes aware of any facts that would constitute a violation of either of the preceding two sentences, it shall immediately notify Owner in writing.

8. Cooperation with Owner's Team. Construction Manager shall cooperate with Architect, Design Team, and any other consultants retained by Owner in connection with the Project to further the interests of Owner and the Project.
9. Construction Manager's Project Team. Construction Manager warrants that all personnel assigned to the Project have the qualifications and experience necessary to discharge Construction Manager's obligations under this Agreement. At all times, Construction Manager shall furnish a qualified, experienced staff for the administration, coordination and management of the Project. Specifically, Construction Manager shall assign the individuals identified in **Exhibit I**, who will devote the time set forth therein to the Project to supervise the performance of the Work. Construction Manager agrees that the Project Manager(s) identified in **Exhibit I** shall be assigned to the Work on a full-time basis. In addition to the above mentioned staff persons, Construction Manager shall also staff the Project with a team of persons acceptable to Owner. Each person assigned to comprise said staff shall be subject to Owner's prior written approval. It is expressly understood and agreed that Construction Manager (i) shall remove, at the request of Owner, any staff person assigned to the Project that Owner shall deem unfit to perform the task assigned to him or otherwise finds objectionable, (ii) shall propose substitutes, and obtain Owner's approval, for any staff persons assigned to the Project who either cease to be in Construction Manager's employ or are removed from the Project by reason of Owner's request as aforesaid, and (iii) shall not make any substitutions of staff persons that have been approved by Owner without first obtaining Owner's prior approval therefore.

ARTICLE 3. PRE-CONSTRUCTION SERVICES

1. Prior to commencement of construction work at the Project Site, Construction Manager shall perform the below listed pre-construction services. Owner shall pay Construction Manager for pre-construction services commencing at eighty percent (80%) completion of construction documents and ending at the commencement of construction based upon Construction Manager's submission to Owner of a requisition detailing actual costs and hours performing such pre-construction services.
 - a) Expediently review the Construction Documents during their development by Architect and Design Team, evaluate them, and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery;
 - b) Provide Owner with recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to Construction Cost;
 - c) As Architect and Design Team progress in their development of the Construction Documents, update at appropriate intervals (as may be directed by Owner), and submit to Owner, estimates of Construction Cost of increasing detail and refinement. Construction Manager shall advise Owner if it appears that the Construction Cost may exceed the latest approved Project Budget and shall make recommendations for corrective action;

- d) Consult with Owner, Architect and Design Team regarding the Construction Documents and make recommendations whenever designs details may adversely affect constructability, cost or schedules;
- e) Provide recommendations and information to Owner regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Trade Contractors. Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Trade Contracts;
- f) Provide recommendations and information to Owner regarding the allocation of responsibilities for safety programs among the Trade Contractors, and coordinate and monitor such safety programs and notify Owner of any non-compliance discovered during the course of Construction Manager's Services hereunder;
- g) Advise on the division of the Project into individual Trade Contracts for various categories of Work, including the method to be used for selecting Trade Contractors and awarding the Trade Contracts. Construction Manager shall also review the Construction Documents and make recommendations to ensure that: (i) the Work of the Trade Contractors is coordinated; (ii) the required labor, materials and supplies are available; (iii) all requirements for the Project have been assigned to the appropriate Trade Contract; (iv) there are no patent conflicts or omissions in the Construction Documents; and (v) proper coordination has been provided for phased construction.
- h) Prepare a Project Schedule providing the time for construction of the Work (the "Project Construction Schedule"), including without limitation: (i) dates for Substantial Completion and Final Completion of the Project; (ii) phasing of commencement and completion of construction required of each Trade Contractor; (iii) bidding and the ordering and delivery of products requiring long lead time; and (iv) the occupancy requirements of Owner. The Project Schedule shall reflect that excavation shall commence on or before February 7, 2013;
- i) Revise the Project Construction Schedule on a regular basis, as reasonably required by Owner;
- j) Expedite and coordinate the delivery and installation of materials requiring long-lead times;
- k) Assist Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project;
- l) Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Construction Manager shall make recommendations and take appropriate action to minimize adverse effects of labor shortages;
- m) After Owner approves the final Construction Documents in writing, assist Owner in updating and submitting the latest estimate of Construction Cost and a further revised Project Construction Schedule for Owner's approval; and

- n) File for and obtain all licenses and permits (including building and site permits) required for the Work.

ARTICLE 4. ADMINISTRATION OF THE CONSTRUCTION

1. **Bidding and Trade Contracts.** Construction Manager shall assist Owner in performing the following services in connection with the bidding and award of written contracts for the performance of construction trade work on the Project ("Trade Contracts"):
 - a) Submit for Owner's approval a list of prospective bidders for each Trade Contract;
 - b) Issue bidding documents to bidders, and conduct pre-bid conferences with prospective bidders, as reasonably requested by Owner. Construction Manager shall assist with regard to questions from bidders and with the issuance of addenda;
 - c) Secure competitive bids to be provided to Owner and Construction Manager from pre-qualified, Owner-approved bidders, for each portion of the Work to be performed by a Trade Contractor;
 - d) When approved by Owner as an alternative to bidding, negotiate Trade Contracts directly with Trade Contractors to expedite work;
 - e) Review and analyze bids and conducting negotiations with bidders to obtain the most favorable price and terms consistent with Owner's goals of economy, quality and schedule;
 - f) Make recommendations to Owner for awarding Trade Contracts or rejecting bids;
 - g) Prepare each Trade Contract. Unless otherwise agreed to by Owner, each Trade Contract shall be written on Construction Manager's standard trade contract form annexed hereto as **Exhibit F**, and shall be approved by Owner in writing prior to execution. Trade Contracts shall be executed by Construction Manager.
2. **Management and Administration.** Throughout the course of the Project, Construction Manager shall:
 - a) Supervise and manage the performance of the Work by the Trade Contractors;
 - b) Coordinate and schedule such Work with the activities of Construction Manager, Design Team, and other Trade Contractors so that the Trade Contractors complete their respective portions of the Work in accordance with their Trade Contracts, the Construction Documents and all Legal Requirements;
 - c) Arrange for the early procurement and expediting of long-lead equipment or materials required for the Work, and advise Owner with respect to potential delays in their purchase and delivery;
 - d) Schedule and conduct Project meetings with Trade Contractors, Owner and Design Team on a regular basis to discuss such matters as procedures, progress, coordination and scheduling. Construction Manager shall promptly prepare and distribute minutes of such meetings to the attendees, as required;

- e) Monitor the performance of the Trade Contractors as it relates to the Project Construction Schedule, and periodically update and reissue the Project Construction Schedule as required by Owner to show current conditions;
- f) Coordinate and supervise the sequence of construction and assignment of space in areas where the Trade Contractors are performing Work;
- g) Perform general conditions work, cleaning and similar services;
- h) Recommend, and cause to have done by others, all appropriate and necessary testing;
- i) Unless separately contracted for by Owner at Owner's option, at all times, cause the Project Site to be kept free from waste material or rubbish caused by the Work. Upon Substantial Completion of the Project, Construction Manager shall cause all waste material, rubbish, tools, construction equipment, machinery, scaffolding, and surplus materials to be removed from the Project Site;
- j) Maintain, in a format acceptable to Owner, accounting records of authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records;
- k) Using the systems determined by Owner, develop, implement and update procedures for the review and processing of Trade Contractor payment applications, and review each Trade Contractor's payment application to determine the amounts due such Trade Contractor;
- l) Implement, maintain and enforce (or retain a consultant to implement, maintain and enforce) a written project loss control program ("Safety Program") for the Project Site, and cause every Trade Contractor to comply with the terms and conditions of the Safety Program. Construction Manager (or its safety consultant, as applicable) shall observe the Work as necessary to enforce the Safety Program, and shall provide a site safety supervisor to be primarily responsible for compliance with such Safety Program. The performance of safety services by Construction Manager (or its safety consultant, as applicable) does not, however, relieve the Trade Contractors of their primary obligation to conduct their Work safely and in compliance with all Legal Requirements;
- m) Take such action as may be necessary in an emergency to protect life and property, and notify Owner of such actions as soon as practicable;
- n) Direct, manage and supervise the Work of the Trade Contractors and evaluate whether such Work is being performed in accordance with the Trade Contracts, and guard Owner against defects and deficiencies in the Work. If Construction Manager determines that Work is being performed contrary to a Trade Contract, it shall promptly notify Owner and Architect of such defective Work and make recommendations to Owner as to the method of correcting it. Construction Manager has the authority, with Owner's prior written approval, to stop a Trade Contractor's Work and require additional inspection or testing of any Work determined to be contrary to a Trade Contract, the Construction Documents or Legal Requirements, whether or not such Work is fabricated, installed or completed. If, at any time before Owner's acceptance of the Work, Owner, Architect or Construction Manager has reasonable cause to believe that any portion of the Work is contrary to a Trade Contract, the Construction Documents or Legal Requirements, Construction Manager

shall, upon Owner's written approval, direct the responsible Trade Contractor to remove or uncover such portion of the Work, even if completed;

- o) Monitor, coordinate and make recommendations to Owner as to construction means, methods, techniques, sequences and procedures employed by the Trade Contractors, without assuming Trade Contractors' responsibility for determining and properly executing the appropriate construction means, methods, techniques and procedures;
- p) Schedule and coordinate the sequence of the Work in accordance with the Construction Documents and the latest Project Construction Schedule approved by Owner. Construction Manager shall cause all Trade Contractors to maintain the progress of the Work in accordance with the Project Construction Schedule, and shall notify Owner of any failure by a Trade Contractor to comply;
- q) Transmit Trade Contractor's requests for interpretation of the Construction Documents to Owner, Architect and the member(s) of Design Team responsible for the Work, and assist in the resolution of any questions that may arise with respect to interpretation of the Construction Documents;
- r) Review requests for changes in the Work, assist in negotiating Change Orders and change proposals, submit recommendations to Owner to enable expeditious and economical completion of the Work, and at Owner's request, prepare and process written Change Orders and transmit them to Trade Contractors;
- s) Promptly notify Owner of any dispute or claim arising during the course of the Project, assist in the review, evaluation and documentation of claims or disputes, and make recommendations to Owner regarding settlement or other disposition of claims or disputes;
- t) Establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals by Trade Contractors, and monitor this process through a submittal schedule. Construction Manager shall provide such submittals to Architect (or, as appropriate, the responsible Design Team member) for review, together with relevant information contained in related documents, and shall maintain a log of all such submittals. Construction Manager shall promptly advise Owner of any problems pertaining to the timeliness of such submittals (and approvals of them), advise Owner periodically as to the status of such submittals, and advise Architect and/or responsible Design Team member of any errors that are discovered by Construction Manager in such submittals (without assuming Architect or Design Team's responsibility for reviewing and approving submittals), and coordinate the various trades after approval of the respective submittals and before installation. Construction Manager's responsibilities under this paragraph shall be fulfilled promptly so as to cause no delay in the Work or activities of Owner or Trade Contractors;
- u) Submit regular written progress reports to Owner including information on the progress of each Trade Contractor's Work and the Project as a whole, showing percentages of completion. Construction Manager shall furnish to Owner twice each month a comprehensive report regarding the progress of the work suitable for presentation to Owner's senior management;

- v) Keep a daily log containing a record of weather, each Trade Contractor's Work on the Project Site, the number of workers, identification of equipment, Work accomplished, problems encountered, and other relevant data, as Owner may require;
- w) Maintain for Owner at the Project Site one record copy of all: (i) Trade Contracts; (ii) Construction Documents; (iii) addenda to the Construction Documents; (iv) Change Orders and other modifications to Trade Contracts; (v) approved shop drawings, product data, samples and other required submittals; and (vi) records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations.
- x) Construction Manager shall make the foregoing documents available to Owner and, upon completion of the Project, shall deliver them to Owner in good order and marked currently to record changes and selections made during construction.
- y) Observe, with Owner or Owner's designee, the final testing start-up, and commissioning of utilities, operational systems and equipment;
- z) Using Owner's punch-list technology if requested by Owner, when each Trade Contractor's Work is represented to be substantially complete: (i) consult with Owner, Architect and Design Team in inspecting the Work to confirm substantial completion; (ii) if the Work is substantially complete, prepare a punch-list of incomplete or unsatisfactory items of Work; (iii) coordinate the correction and completion of the punch-list Work; (iv) evaluate final completion of the Work by the Trade Contractor; (v) make recommendations to Owner when work is ready for final inspection; and (vi) assist Owner and Design Team in conducting final inspections.
- aa) Cooperate and consult with Owner in closing-out Trade Contracts, review requests for final payment by Trade Contractors and make recommendations to Owner regarding payment, and receive and deliver to Owner before final payment the complete closeout package required by each Trade Contract, including warranties or guarantees (as required by the Trade Contract, Construction Documents, or otherwise), lien and other waivers, releases, affidavits, bonds, all keys, manuals, record drawings and maintenance stock belonging to Owner;
- bb) Cooperate with Owner in obtaining temporary and permanent certificates of occupancy;
- cc) Monitor the Trade Contractors' correction of defective Work, including, without limitation, the performance of all Work under guarantees provided by Trade Contractors;
- dd) Assist and cooperate with Owner in any legal actions or proceedings arising out of or relating to the Work, including, without limitation, making required appearances and providing documentation, except where Construction Manager is adverse to Owner in such legal actions or proceedings; and
- ee) Assist Owner in filing documents required for all approvals of governmental authorities having jurisdiction over the Project.

ARTICLE 5. OWNER'S RESPONSIBILITIES

1. Information. Owner, in consultation with Architect and Design Team, shall provide full information regarding the requirements for the Project.
2. Budget. Owner shall establish an overall budget for the Project based on consultation with Construction Manager, Architect and Design Team, which shall include the Construction Cost, Owner's other costs and reasonable contingencies related to all of these costs (the "Project Budget").
3. Owner's Representative. Owner shall designate a representative or representatives, in writing, authorized to act on Owner's behalf with respect to the Project. Owner, or such authorized representative(s), shall render decisions in a timely manner pertaining to documents submitted by Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of Construction Manager's Services.
4. Testing. Owner shall, with the assistance of Construction Manager, furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Construction Documents.
5. Construction Documents. Owner shall furnish Construction Manager with a complete set of the Construction Documents.
6. Notice of Defect. Prompt written notice shall be given by Owner to Construction Manager if Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.
7. Performance by Owner's Forces. Owner reserves the right to perform any or all construction and operations related to the Project with Owner's own forces, and to award contracts in connection with the Project that may or may not be part of Construction Manager's responsibilities under this Agreement ("Separate Contractors"). Construction Manager shall fully cooperate with Owner's Separate Contractors. Owner shall endeavor to ensure that the Separate Contractors do not interfere with or cause delay to Construction Manager hereunder.
8. Early Occupancy. Prior to Substantial Completion of the Project, Owner or its designees shall have the right to use or occupy all or any portion of the Project or to install or cause the installation of furniture, furnishings and equipment therein.

ARTICLE 6. WARRANTIES

1. Material Warranty. Construction Manager shall warrant and represent, and shall require all Trade Contractors to warrant and represent, that all materials and equipment incorporated in the Work shall be new and that the Work shall be of good quality, free from improper workmanship and defective materials and in strict conformance with the applicable Trade Contract, the Contract Documents and all Legal Requirements. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
2. Defective Work. Construction Manager shall guarantee, and shall require all Trade Contractors to guarantee, all Work (including but not limited to all labor and materials) for a period of one (1) year after Final Completion (or if this Agreement is earlier terminated, within one (1) year following the date of such earlier termination), or such longer period of time as may be prescribed by law or by

the terms of any special warranty required by the Contract Documents. In the event the Work or any portion thereof is found defective or not in accordance with the Trade Contract or the Contract Documents within such time period, Construction Manager shall correct it or cause it to be corrected, or shall require the appropriate Trade Contractor to correct it or cause it to be corrected, at the Construction Manager's and/or the appropriate Trade Contractor's sole cost and expense, promptly after written notice from Owner to do so. If such corrective work is performed by a Trade Contractor, Construction Manager shall monitor same. If a Trade Contractor fails to properly correct defective Work in accordance with this Section, Construction Manager shall assume full responsibility for performing same.

3. Warranties/Guarantees to CM. In addition to the obligations set forth above, Construction Manager shall enforce all other warranties and guarantees set forth in the Trade Contracts and/or required by the Construction Documents. Construction Manager shall deliver all Trade Contractor warranties, manufacturer warranties and product warranties to Owner upon completion of the Work. Construction Manager agrees that all warranties and guarantees in this Agreement shall inure to the benefit of Owner, and to the assignees and/or designees of Owner, including, without limitation, the purchaser(s) of all or any portion of the Project. All warranties/guarantees shall be enforceable by Construction Manager on Owner's behalf, or by Owner directly, or by Owner's assignees and/or designees.

ARTICLE 7. CHANGES IN THE WORK

1. Change Orders/Other Contract Adjustments. Without abandoning or invalidating this Agreement or any Trade Contract, Owner may make changes in the Work, including, without limitation, additions to, deletions from, or alterations in the Work. Any change to the Work shall be by written "Change Order" or "Other Contract Adjustment" (collectively, for purposes of this Agreement, "Change Orders") prepared by Construction Manager and signed by Owner in accordance with the following requirements:

- a) Construction Manager shall administer the Change Order process in accordance with Owner's requirements so that within five (5) days after a request for a Change Order is made by Construction Manager, a Trade Contractor or Owner, Construction Manager submits to Owner a proposed Change Order in the format annexed as Exhibit L and signed by Construction Manager and/or the relevant Trade Contractor(s), setting forth in detail (with suitable breakdowns for Work classifications, and using the unit price or other costing method provided in the Trade Contract(s)): (i) the cost or savings of the change, which shall reflect the most economical manner of affecting the change, and for which Construction Manager shall negotiate the best price obtainable; and (ii) the changes in the Project Construction Schedule (including Substantial Completion and Final Completion dates) that would result from the implementation of the Change Order.
- b) If Owner approves the proposed Change Order, Owner shall issue to Construction Manager a written Change Order signed by Owner, setting forth all terms of the Change Order, including (without limitation) any adjustment to the price of the Work or the Project Construction Schedule.
- c) Construction Manager has no authority to order Change Order Work without Owner's prior written approval.

- d) Each Change Order shall specify whether Construction Manager and/or the relevant Trade Contractor(s) is entitled to an extension in the Project Construction Schedule. No time extension shall be permitted unless expressly stated in a Change Order executed by Owner.
2. Construction Manager's Fee. Construction Manager is not entitled to any increase in its Fee (as defined in Exhibit A) in connection with Change Orders.

ARTICLE 8. CONFIDENTIALITY

1. Construction Manager agrees that the Contract Documents, and all technical, financial, operations and other information concerning Owner and/or the Project that Construction Manager obtains or becomes aware of, shall be treated as confidential and proprietary information, and Construction Manager shall not use or disclose any such information in any manner except to the extent that such use or disclosure may be necessary for the performance of the Work. Submission or distribution of documents to meet official regulatory requirements, as required by law, or for other proper and necessary purposes in connection with the performance of the Work shall not be construed as a violation of this Section.
2. Construction Manager is specifically prohibited from using photographs of any portion of the Work for publicity and advertising or for any other purpose without the prior written permission of Owner, which consent shall not be unreasonably withheld. Further, Construction Manager shall not release information on the Project or the subject matter of this Agreement to the public without the prior written consent of Owner.
3. The requirements of this Article shall survive the termination of this Agreement. Construction Manager shall include the requirements of this Article in all Trade Contracts.

ARTICLE 9. EVENTS OF DEFAULT AND TERMINATION OR SUSPENSION OF AGREEMENT

1. Events of Default. The following shall be considered "Events of Default":
 - a) Construction Manager abandons its Services, or refuses to proceed with its Services when and as directed by Owner, and such failure is not cured within seven (7) days after Owner has given Construction Manager written notice specifying such failure.
 - b) Construction Manager persistently disregards Legal Requirements or orders of a governmental or quasi-governmental authority having jurisdiction over the Work.
 - c) Construction Manager delays the Work and such delay is not abated within seven (7) days after Owner has given Construction Manager written notice specifying such delay.
 - d) Construction Manager cannot, for reasons due to the fault of Construction Manager and/or its Trade Contractors, complete its Services on or before the date of Substantial Completion as set forth in the Project Construction Schedule, as reasonably determined by Owner;
 - e) Construction Manager fails to discharge liens as required by Article 12.1 hereof.
 - f) Construction Manager becomes a party to any insolvency proceeding in a capacity as a debtor, and such proceeding is not stayed or discharged within thirty (30) days after the

commencement of same. The term “insolvency proceeding” includes: (i) the filing of a petition for relief under Chapter 11 of Title 11 of the United States Code by Construction Manager; (ii) any petition or action by Construction Manager seeking reorganization, liquidation, dissolution or similar relief under any other present or future federal or state statute or regulation; (iii) the appointment, with or without the consent of Construction Manager, of any trustee, custodian, receiver or liquidator of Construction Manager or of any of its property or assets; or (iv) any assignment by Construction Manager for the benefit of creditors.

- g) Construction Manager fails to observe or perform any other material obligations under this Agreement and such failure is not cured within seven (7) days after Owner has given Construction Manager written notice specifying such failure.
- 2. Termination for Default. Upon the occurrence of an Event of Default, Owner may, at Owner’s option, terminate the employment of Construction Manager by issuing written notice to Construction Manager of the same. Upon such termination, title to any or all materials, Work in process, dies and tools (whether on the Project Site or located at an off-Project Site location) which are necessary for, or useful in connection with, the performance and completion of the Services or Work, as determined by Owner, shall vest in Owner and Owner may take possession of and utilize the same for performance and completion of the Services and/or Work.
- 3. Payment After Default Termination. If Construction Manager is terminated for default under Article 9.2, it shall be entitled to payment of an amount equal to:
 - a) The aggregate of the actual unpaid General Conditions Costs incurred by Construction Manager in its proper performance of the Services up to the date of termination;
 - b) Plus the portion of Construction Manager’s Base Fee attributable to Services performed in accordance with this Agreement up to the date of termination;
 - c) Plus the fair market value of dies and tools referenced in Article 9.2 (less, if Owner elects to return the dies and tools to Construction Manager, the salvage value thereof); and
 - d) Less an amount equal to the additional costs and expenses (including reasonable attorneys’ fees and disbursements) incurred by Owner over those which would have otherwise been incurred in connection with the Project had Construction Manager not defaulted hereunder, including, without limitation, the additional expense of engaging another construction manager as well as additional compensation for Architect’s and Design Team’s additional services made necessary by such default.

Construction Manager is entitled to such payment only after Final Completion of the Project. Owner has the right to set-off against the aforesaid payment any amounts then due and payable by Construction Manager to Owner hereunder or which may accrue as damages owing by Construction Manager to Owner under the terms of this Agreement.

- 4. CM’s Completion of the Services. If Owner believes that an “Event of Default” has occurred under Article 9.1, Owner may, in addition to all other rights and remedies available at law and under this Agreement, complete or cause the Services to be completed, by such means, and in such manner, by agreement or otherwise, as Owner deems advisable. Construction Manager shall not interfere, directly or indirectly, with Owner’s right to complete the Services by others, or to have any of the Trade Contractors complete their Work.

5. Improper Termination for Default. If it is determined by a court of competent jurisdiction that a termination under Article 9.2 was wrongful or unjustified, such termination shall be deemed a termination for the convenience of Owner under Article 9.6, and the sole right, remedy and recourse of Construction Manager against Owner shall be governed and determined by Article 9.7.
6. Termination for Convenience. Owner may, at any time and for any reason whatsoever in Owner's sole discretion, terminate this Agreement (or any portion thereof) for its own convenience by delivering to Construction Manager a written notice of termination, specifying (i) the date upon which such termination shall be effective, and (ii) any specific portion of the Services to be completed by Construction Manager prior to such termination. Upon receipt of any such notice of termination, Construction Manager shall:
 - a) Stop all Services under this Agreement on the date, and to the extent, specified in the notice of termination;
 - b) Enter into no further contracts or purchase orders, except as may be necessary to complete the portion of the Services under this Agreement, if any, that is not terminated;
 - c) Unless directed otherwise by Owner, terminate all contracts or purchase orders entered into directly by Construction Manager for Services to be performed after the date termination is effective;
 - d) At Owner's option, assign to Owner (or to such other entity as Owner may direct), in the manner, at the time, and to the extent directed by Owner, all of Construction Manager's right, title and interest under any or all contracts or purchase orders entered into directly by Construction Manager in connection with the Services or the Project, in which case, Owner (or such other entity as Owner may direct), shall accept all of Construction Manager's obligations arising under such contracts or purchase orders after the date of such assignment. Construction Manager shall remain responsible for all obligations accruing under such contracts or purchase orders before the date of assignment.
 - e) Subject to the prior written approval of Owner, settle all outstanding liabilities and all claims arising out of the termination of contracts or purchase orders;
 - f) If applicable, transfer title to Owner, to the extent not already vested in Owner, and deliver in the manner, at the time and to the extent directed by Owner: (i) supplies and other materials and equipment produced as a part of or acquired in connection with the performance of the Services; and (ii) copies of the Contract Documents and other drawings, sketches, specifications, shop drawings, information and other relevant documentation related to the Project.
 - g) Complete performance of the portion of the Services specified in Owner's notice of termination to be completed on or before the effective date of the termination;
 - h) Cooperate with the transition of the Project to another construction manager, if applicable;
 - i) Before the effective date of termination, take such actions as may be necessary or as Owner may reasonably direct for the protection and preservation of the property in the possession of Construction Manager that is related to the Services or the Project and in which Owner has or may acquire an interest.

- j) The existence of any dispute between Construction Manager and Owner shall not interfere with the discharge of Construction Manager's obligations under this Article 9.6. If Construction Manager fails to perform these obligations it shall be liable to Owner for any and all damages Owner sustains as a result of such failure.
- k) In the event of a termination of this Agreement pursuant to this Article 9.6, Construction Manager shall remain responsible for all of its obligations performed prior to the date of such termination.

7. Payment After Termination for Convenience. If Owner terminates Construction Manager's Services for convenience under Article 9.6, CM shall pay Construction Manager for:

- a) The actual unpaid General Conditions Costs incurred by Construction Manager in its proper performance of the Services up to the date of termination;
- b) Plus the portion of Construction Manager's Base Fee attributable to Services performed in accordance with this Agreement up to the date of termination;
- c) Plus reasonable, demobilization costs documented to Owner's satisfaction;
- d) Less any sums properly deductible by Owner under the terms of this Agreement.
- e) If this Agreement is terminated for convenience under Article 9.6, Construction Manager shall not be entitled to recover anticipated profits on account of Services unperformed.

8. Suspension, Re-Sequencing, Stoppage. Owner may, at any time and for any reason, notify Construction Manager in writing to suspend, re-sequence, stop or interrupt the Services, or any portion thereof, for a period of time. Such notice shall specify the period during which the Services are to be stopped. Construction Manager shall resume the Services on the date specified in such notice, or on such other date as Owner may direct in writing. A suspension, re-sequencing, stoppage or interruption under this Article 9.8 shall constitute a Contemplated Delay and shall be treated as set forth in Article 13 below.

9. Termination by Construction Manager. Construction Manager may terminate this Agreement upon thirty (30) days' prior written notice and opportunity to cure, if Owner fails to pay Construction Manager undisputed amounts owed under the terms of this Agreement without good cause. If the Agreement is terminated under this Article 9.9, it shall be deemed a termination for convenience under Article 9.6 and Construction Manager shall be compensated in the manner and to the extent set forth in Article 9.7.

10. Demobilization. In the event of any termination pursuant to this Article 9, Construction Manager shall demobilize and vacate the Project Site in accordance with the instructions of Owner.

ARTICLE 10. COMPENSATION TO CONSTRUCTION MANAGER

1. Construction Manager's Fee. In consideration of Construction Manager's performance of its Services in accordance with this Agreement, Owner shall pay to Construction Manager the fees set forth in Exhibit A.
2. Costs Included in Construction Manager's Fee. Construction Manager's Fee includes compensation for the following (none of which shall be separately charged to the Project):

- a) Salaries, fringe benefits, or other compensation of Construction Manager's employees at Construction Manager's principal office and branch offices involved in Project activities (but excluding Project Manager's time allocated to the Project which shall be paid for as a General Condition Cost) including, without limitation, scheduling, legal, estimating, accounting and purchasing;
- b) General operating and corporate expenses of Construction Manager's principal and branch offices other than the field office;
- c) Construction Manager's capital expenses, including any interest on Construction Manager's capital employed for the Project;
- d) Overhead or general expenses of any kind which are not expressly included in the General Conditions Costs reimbursable under Article 10.3;
- e) Salaries, fees and related fringe benefits of Construction Manager's corporate officers and directors;
- f) Construction Manager's profit; and
- g) All other costs, expenses and charges of any kind whatsoever not specifically included within the General Conditions Costs reimbursable under Article 10.3.

3. **General Conditions Costs.** In addition to the Fee, Owner shall reimburse Construction Manager for the actual costs appearing in **Exhibit M** and set forth in this Article 10.3 (the "General Conditions Costs"), to the extent such costs are (i) necessarily incurred and paid by Construction Manager in the proper performance of the Services, and (ii) fully documented to Owner. The General Conditions Costs shall not be higher than prevailing in the locality for work and services similar to the Services. The General Conditions Costs shall not include any costs which arise out of the negligence, misconduct, or breach of this Agreement by Construction Manager or any entity for which it may be liable. The General Conditions Costs include the following:

- a) The actual direct wages of labor directly on Construction Manager's field payroll, as evidenced by timesheets or such other documentation as Owner may reasonably require. "Field" means, for purposes of this Agreement, the location of, or in the vicinity of, the Project Site;
- b) Salaries of Construction Manager's employees stationed at the field office. Project manager(s), superintendent(s), accountant(s) and other employees, whose part time services are required for the Services, are considered stationed at the field office and their salaries paid for such portions of their time as may be devoted to the Services, as evidenced by timesheets or such other documentation as Owner may reasonably require;
- c) To the extent not included in Article 10.3(a) or 10.3(b) above, payroll taxes and contributions for federal old age benefits, unemployment insurance, family leave or other employee benefits required by law, and such other applicable actual or accrued fringe benefits, all in proportion to the relevant employees' time devoted to the Services;
- d) The net cost of all materials purchased by Construction Manager, whether for permanent or temporary use in connection with the Project, including cost of inspection, testing, transportation, storage and handling of same;

- e) Travel expenses of Construction Manager's employees necessarily incurred in the discharge of the Work. Long distance travel expected to exceed \$500 in the aggregate shall be reimbursed only if approved in advance in writing by Owner. Construction Manager's employees may not charge the costs of travel between the Project Site and their homes;
- f) Premiums for the insurance Construction Manager is required to obtain and maintain in accordance with Exhibit B and premiums for Subguard insurance if Owner requires Construction Manager to carry such Subguard insurance pursuant to Article 14 below.
- g) All contracts and purchase orders entered into directly by Construction Manager with Owner's prior written approval in connection with the Services, including but not limited to contracts for site safety;
- h) The cost of the following items, where required for (and to the extent attributable to) the performance of the Services:
 - (1) Supplies, tools, and equipment;
 - (2) [Intentionally deleted];
 - (3) [Intentionally deleted];
 - (4) Telephone, telegram and facsimile services;
 - (5) Overnight delivery, courier or postal services;
 - (6) Plotting, printing, blueprints, and photographs;
 - (7) Field office supplies, stationery and similar items;
 - (8) Preparation and reproduction of payroll reports;
 - (9) Surveys, soil and other investigations;
 - (10) Protection and repair of adjoining property, except if such damage is caused by Construction Manager;
 - (11) Rental of property for storage, field office and other purposes, if approved by Owner in writing;
 - (12) Royalties for patents that may be involved in the Services;
 - (13) Fees for permits including building permit and licenses (except if paid for directly by Owner);
 - (14) Rental of tools and equipment, including transportation, loading, unloading, installation, dismantling and removal thereof; and
 - (15) Other expenses pre-approved by Owner in writing.
- i) The General Conditions Costs shall be credited with all rebates, trade discounts, credits on taxes, credits realized on cash deposits, or other discounts or rebates available to or realized

by Construction Manager in performing the Services. Construction Manager shall take steps necessary and appropriate to obtain such discounts, rebates and credits, including giving Owner sufficient advance notice thereof so that Owner can fund any monies required in connection with them. Owner shall be credited with charges made to Trade Contractors for use of hoisting facilities or elevator service, to the extent such Trade Contractors are responsible for such costs under the terms of their respective Trade Contracts.

- j) Any tools, supplies or equipment left at the Project at the completion of the Work shall be transferred to Owner.

4. **Non-Reimbursable Costs.** Except as otherwise provided herein, Construction Manager shall not be reimbursed for the following costs:

- a) Executive management of the Services;
- b) Compensation of Construction Manager's main and regularly established regional office personnel and office expenses (other than those described above);
- c) Services of Construction Manager's consulting division personnel, including architectural, mechanical and structural department heads and their staffs, except when brought in to address a particular issue with Owner's prior approval;
- d) Services of Construction Manager's officers when stationed in the main or regularly established regional offices. If such officers are assigned to the Project Site, reimbursement shall be limited to the periods of such assignment;
- e) Services of Construction Manager's main and regularly established regional offices' estimating department in the preparation of preliminary budget studies, estimates of alternate schemes and materials and overall project re-estimates through the design development phase of the Construction Documents;
- f) Services of Construction Manager's main and regularly established regional office purchasing department for all purchasing;
- g) Cost of Construction Manager's payroll robbery and general fidelity insurance and any losses sustained by Construction Manager in connection with theft, robbery or misappropriation of funds by Construction Manager's employees;
- h) All administrative or general overhead expenses in connection with the operation of Construction Manager's main and regularly established regional offices;
- i) Costs not covered by insurance, due to (i) the negligent acts or omissions or willful misconduct of Construction Manager; (ii) Construction Manager's failure to perform its obligations under this Agreement; or (iii) the violation by Construction Manager of any Legal Requirements;
- j) Casualty losses and related expenses sustained by Construction Manager in connection with tools, equipment, supplies and other personal effects owned or rented by Construction Manager;

- k) Any other costs which would have been insured but for the failure of Construction Manager to carry the insurance required to be carried hereunder or the failure of Construction Manager to comply with the requirements of any insurance carriers providing insurance coverage for the Project;
- l) Costs associated with Construction Manager's failure to (i) obtain any and all applicable permits that are Construction Manager's responsibility under the Contract Documents in a timely manner, or (ii) coordinate and schedule inspections and commissioning;
- m) Losses, costs, and expenses incurred by Construction Manager in connection with its indemnity obligations hereunder;
- n) Costs incurred by reason of Construction Manager's failure to comply with its obligations under this Agreement, including costs in the form of penalties, fines or other similar charges, as well as costs incurred in contravention of Legal Requirements;
- o) [Intentionally deleted];
- p) Costs of insurance maintained by Construction Manager in excess of the amounts required by Exhibit B; and
- q) Costs of any other items not expressly included in Article 10.3.

ARTICLE 11. PROGRESS PAYMENTS

- 1. Owner shall make progress payments to Construction Manager at monthly intervals in accordance with the following procedures:
 - a) On or about the 25th day of each calendar month, Construction Manager shall review with Owner (and with Architect and/or Design Team, if requested by Owner), a draft or "pencil-copy" of each Trade Contractor's payment application for Work performed from the 1st day to the 25th day of the month and projected through the end of the month, and make recommendations to Owner with respect to payment thereon. On or before the 5th day of the following month, Construction Manager shall submit a "Project Payment Application" on an AIA G702/703 form (or such other form as required by Owner). The Project Payment Application shall separately itemize and set forth in complete detail (i) the installment of Construction Manager's Base Fee earned that month; (ii) the General Conditions Costs incurred that month; and (iii) the amounts due each Trade Contractor, based upon the pencil-copy Trade Contractor payment applications approved by Owner. Each Project Payment Application shall be accompanied by lien waivers executed by Construction Manager and all Trade Contractors in the form annexed hereto as Exhibit D or Exhibit E, as applicable, or in such other form as required by Owner, waiving any lien or right to file a lien on account of any Services or Work performed or materials furnished by Construction Manager or Trade Contractors up to and including the date for which, and to the extent that, payments have been made.
 - b) Construction Manager shall require each Trade Contractor to show the following in its payment application: (i) the original Trade Contract price; (ii) any additions to or deletions from such original Trade Contract price, to yield an adjusted Trade Contract price; (iii) the amount paid to the Trade Contractor prior to the date of its payment application; (iv) the amount being requested under the payment application; (v) the amount being retained

under the terms of its Trade Contract (which amount, unless otherwise approved in advance by Owner, shall be ten percent (10%) until such Work is fifty percent (50%) complete and five percent (5%) (or such greater percentage as determined by Lender) thereafter until Final Completion); (vi) the balance payable under the Trade Contract after payment is made pursuant to the Trade Contractor's payment application; and (vii) a sworn statement that all portions of the Work included in the payment application have been performed in accordance with the Trade Contract, and in the percentages represented. If a Trade Contractor requests payment for materials stored off-site, Construction Manager shall require the Trade Contractor to separately itemize the costs of such materials, comply with all Lender requirements for documentation of such materials, provide all other documentation required by Owner, and satisfy all pre-conditions to payment set forth in the Trade Contract.

- c) Construction Manager's submission of each Project Payment Application constitutes a representation by Construction Manager that (i) the portion of the Base Fee billed has been earned; (ii) the General Conditions Costs requested have been incurred by Construction Manager on account of the Services; and (iii) based upon Construction Manager's observations of the Work, each Trade Contractor's Work has been completed to the extent stated.
- d) On or before the forty-fifth (45th) day after Owner's receipt of Construction Manager's Project Payment Application (which day Owner may extend, without breaching its obligations hereunder, by an additional fifteen (15) days, if such extension is required by Lender or otherwise reasonably necessary), Owner shall pay Construction Manager the amount approved by Owner (subject to Lender's requirements, if applicable) for Base Fee and General Conditions Costs. No retainage may be deducted from Base Fee or General Conditions Costs payable under this Agreement. In addition, Owner shall pay CM for each Trade Contractor the amount approved by CM and Owner, and Construction Manager shall pay such amounts to the respective Trade Contractors within seven (7) days of receipt of same from Owner. No payment made by Owner, whether to Construction Manager or Trade Contractors, constitutes acceptance by Owner of any non-conforming Work or stored materials, or a waiver of any right or claim by Owner in connection with such non-conforming Work or stored materials.
- e) Within forty-five (45) days following Substantial Completion and submission of a Project Payment Application therefor by Construction Manager, Owner shall pay to Construction Manager the amount of Construction Manager's Base Fee then due and payable, together with the balance remaining unpaid to Construction Manager on account of General Conditions Costs, after deducting from monies otherwise due therefrom a hold-back of two hundred percent (200%) of the amount necessary to ensure completion of punch-list items and replacement of defective work. In addition, Owner shall furnish checks or wires made payable to each Trade Contractor in the amount approved by CM and Owner, after deducting therefrom (i) retention as permitted pursuant to the provisions of each Trade Contract, and (ii) a hold-back of two hundred percent (200%) of the amount necessary for each Trade Contractor to complete punch-list items and replace defective work. If Owner furnishes checks, Construction Manager shall promptly distribute such checks to the respective Trade Contractors.
- f) Within sixty (60) days following Final Completion and submission of a Project Payment Application therefor by Construction Manager (accompanied by all documentation required under Article 13.3, if not previously delivered by Construction Manager to

Owner), Owner shall pay to Construction Manager the balance remaining unpaid on account of Construction Manager's Fee (including any Incentive Fees in accordance with **Exhibit A**, if applicable) and General Conditions Costs. Owner shall also release the balance of any amounts held back under each Trade Contract for distribution by Construction Manager. The acceptance by Construction Manager of final payment following Final Completion constitutes a waiver of all those claims of which Construction Manager had knowledge, unless set forth in writing and identified by Construction Manager as unsettled at the time of Final Completion.

2. Owner may, in its good faith judgment reasonably exercised, withhold from any payment due or to become due to Construction Manager any amount necessary to reimburse Owner for its actual or potential expenditures for the account of Construction Manager or to secure Owner's remedies in consequence of any actual or potential default or breach by Construction Manager under this Agreement.
3. Construction Manager shall perform all customary construction accounting and bookkeeping services, as requested by Owner in connection with the Project. Construction Manager shall maintain such records for a period of at least six (6) years after Final Completion. All books, records or other documents shall be in accordance with standard construction industry accounting practices in New York City. Upon three (3) days prior written notice, Construction Manager shall make such records available to Owner or its authorized representative for inspection and copying at a mutually convenient time and location.

ARTICLE 12. MECHANIC'S LIENS

1. **Construction Manager's Duty to Discharge Liens Filed Under or Through Construction Manager.** If, at any time, a mechanic's lien is filed against the Project by anyone claiming under or through Construction Manager for work or services performed or materials, supplies or equipment furnished in connection with the Project, Construction Manager shall, within seven (7) days after written notice from Owner, cause such lien to be discharged of record (by bonding or otherwise) at Construction Manager's sole cost and expense. However, if such lien arises only because Owner wrongfully failed to make payment properly due to Construction Manager under this Agreement, Construction Manager is not required to cause such lien to be discharged of record.
2. **Owner's Costs Recoverable.** If Construction Manager fails to discharge its duty under Article 12.1 above, Owner may (but is not required to) cause the discharge of such lien and take other appropriate action as Owner deems appropriate, and the costs and expenses incurred by Owner in doing so (including, without limitation, premiums for any bond and attorneys' fees and disbursements), shall be paid by Construction Manager to Owner on demand or, at the option of Owner, deducted from any payment then due or thereafter becoming due from Owner to Construction Manager under this Agreement.
3. **Construction Manager's Duty to Discharge Liens Filed By Others.** If, at any time, a mechanic's lien is filed against the Project by anyone who is to be paid directly by Owner (and not through Construction Manager), Construction Manager, upon written notice from Owner, shall use its best efforts to promptly arrange for and facilitate the discharge of such lien (by bonding or otherwise), but, provided such lien does not arise due to the fault of Construction Manager, such discharge shall be at Owner's sole cost and expense.

ARTICLE 13. TIME FOR PERFORMANCE

1. Project Construction Schedule. Construction Manager shall promptly and diligently perform its Services, and shall cause the Work of all Trade Contractors to be performed, in strict accordance with the Project Construction Schedule approved by Owner, as same may be revised under the terms of this Agreement. Construction Manager acknowledges that time is of the essence in its performance of the Services and the progress of the Work, and that this requirement applies to all dates, time limits, and time requirements set forth in this Agreement and the Project Construction Schedule.
2. Substantial Completion. "Substantial Completion" of the Project shall mean the date: (a) Architect certifies that the Project is substantially complete; (b) the Project is sufficiently complete in accordance with the Contract Documents and Legal Requirements so Owner can use the Project without interference for all of its intended purposes, with only minor punch-list items of Work incomplete; and (c) a temporary certificate of occupancy has been issued by the appropriate local governmental authority for all parts of the building that is the subject of the Project except for two (2) apartments used for marketing and retail.
3. Final Completion. "Final Completion" of the Project shall mean the date: (a) Architect certifies that the Project is finally complete; (b) all Work, including all punch-list work, has been fully and satisfactorily completed in a good and workmanlike manner, in full compliance with the Contract Documents and Legal Requirements; (c) all final certificates of approval relating to the Work have been issued and delivered to Owner; (d) all required receipts, releases of liens, affidavits, waivers, guarantees, warranties, bonds, as-built drawings, operation and maintenance manuals, building department approvals, fire department approvals and any other documents required under this Agreement have been delivered to Owner; (e) Owner and/or its designee(s) has received training on the operation and maintenance of all building systems; (f) Construction Manager and all Trade Contractors have provided all documentation, sign-offs and approvals necessary to enable Owner to obtain a permanent certificate of occupancy by the appropriate local governmental authority; and (g) Construction Manager delivers a complete closeout package to Owner for each Trade Contractor.
4. Contemplated Delays. For purposes of this Agreement, "Contemplated Delays" (a) shall be deemed to include delays or hindrances to the Services or Work caused by (i) strikes, (ii) fire, (iii) acts of the public enemy, (iv) unavailability of, or inability to obtain, labor or materials by reason of shortages which affect the supply or availability of labor or materials, (v) floods, tornados, hurricanes, blizzards or earthquakes, (vi) rebellions, riots, insurrections or sabotage, (vii) labor disputes provided such disputes are beyond Construction Manager's control and provided Construction Manager takes all responsible steps to remediate them, (viii) weather conditions making performance of Work unsafe and/or contrary to generally accepted construction standards, (ix) concealed conditions and hazardous materials, (x) acts of federal, state and/or local governmental bodies in their sovereign capacity; and (xi) changes in the Work, provided that Change Orders are properly authorized and approved under Article 7 above; (xii) Construction Documents that are incomplete or contain errors or omissions, necessitating the issuance of excessive requests for interpretation or Change Orders; (xiii) extensive and time-consuming reviews of Construction Documents before approval; (xiv) delayed or inefficient processing of shop drawings by Architect and/or Design Team; (xv) negligent acts or omissions by Owner, Architect and/or Design Team in the performance of their respective obligations for the Project; (xvi) failures by Owner, Architect and/or Design Team to give approvals or consents in accordance with the Project Construction Schedule; and (xvii) re-sequencing, stoppage or interruption of the

Work ordered by Owner; and (b) shall be recognized only if Construction Manager has used its best efforts to minimize the period of delay or hindrance.

5. Time Extensions. Construction Manager shall be entitled to a day-for-day extension of the Substantial Completion and/or Final Completion dates set forth in the Project Construction Schedule, as well as to the milestone dates set forth in Exhibit A (a "Time Extension") only for Contemplated Delays that: (a) directly impact activities on the critical path of the Project Construction Schedule (concurrent delays shall not be treated cumulatively for purposes of determining impact on the critical path under this Article); and (b) are beyond the control of Construction Manager. A Time Extension shall be deemed accepted by Owner only if reflected in a validly issued Change Order.
6. Remedy for Contemplated Delays. No delay to the Project or the Project Construction Schedule shall give rise to any increase to Construction Manager's Fee.
7. Acceleration of Services. Construction Manager shall notify Owner promptly if the Services or the Work shall not be completed within the time provided in the Project Construction Schedule for any reason, including but not limited to a Contemplated Delay. If, in the reasonable judgment of Owner, the Services and/or the Work are delayed for any cause within Construction Manager's reasonable control, Construction Manager shall take appropriate action to comply with the Project Construction Schedule, and shall, if requested by Owner, submit a schedule recovery plan to demonstrate the manner in which Construction Manager proposes to regain the lost time.

ARTICLE 14. INSURANCE, INDEMNIFICATION AND BONDING

1. Construction Manager shall provide a Contractor Controlled Insurance Program ("CCIP") as set forth in Exhibit B.
2. To the fullest extent permitted by law, Construction Manager shall defend, indemnify, and hold harmless Owner, Lender (if applicable), all entities identified on Exhibit C, and their respective partners, members, managers, agents, employees, successors, and assigns (collectively "Indemnitees"), from and against all claims, losses, liability, damages, costs and expenses, direct or consequential (including, without limitation, the deductible amounts of any insurance and attorneys' fees and disbursements), to the extent arising in whole or in part negligent acts or omissions by Construction Manager or its agents, consultants, employees or representatives in connection with the Project. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Indemnitee.
3. In any and all claims against any Indemnitee by any employee of Construction Manager, or anyone directly or indirectly employed by Construction Manager or anyone for whose acts Construction Manager may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Manager under workers' or workmen's compensation acts, disability acts or other employee benefit acts.
4. The provisions of this Article shall survive the expiration or termination of this Agreement.
5. Subject to Lender requirements, Construction Manager shall require certain Trade Contractors to provide performance and payment bonds for one-hundred (100%) percent of the value of such

Trade Contract. Alternatively, at Owner's option, Construction Manager shall provide Subguard insurance for all qualified Trade Contractors.

ARTICLE 15. MISCELLANEOUS

1. Practice of Architecture and/or Engineering. Nothing contained in this Agreement shall be deemed to require or authorize Construction Manager to perform or do any acts which would be deemed the practice of architecture or engineering within the meaning of applicable law. Such limitation shall not apply to engineering services properly delegated pursuant to applicable law.
2. Effectiveness of Agreement. This Agreement, only when executed by both parties, shall be effective as of the date first stated above. All understandings and agreements heretofore had among Owner and CM with respect to the Project are merged into, or superseded by, this Agreement. This Agreement fully and completely expresses the agreement of the parties with respect to the Services and shall not be modified or amended except by written agreement executed by each of the parties hereto. Construction Manager understands and agrees that no representations of any kind whatsoever have been made to it other than as appear in this Agreement, that it has not relied on any such representations and that no claim that it has so relied on may be made at any time and for any purpose.
3. Assignment by Construction Manager. Construction Manager shall not assign this Agreement or the performance of all or any of its obligations hereunder without the prior written consent of Owner, which consent may be given or withheld in Owner's sole and exclusive discretion.
4. Assignment by Owner. This Agreement may be assigned by Owner without the consent of Construction Manager to Lender (if applicable), any person or entity designated by Lender, or any entity affiliated with Owner (hereafter referred to as a "Permitted Assignee"). In all other cases, Owner's assignment of this Agreement is subject to the prior approval of Construction Manager, which approval shall not be unreasonably withheld or delayed (once approved by Construction Manager, such assignee shall be deemed an "Approved Assignee"). If Owner assigns this Agreement pursuant to the terms of this Article, Construction Manager shall deal with such Permitted Assignee or Approved Assignee in the place and stead of Owner and shall perform all of its obligations under this Agreement. Upon the assignment and assumption of this Agreement, Owner shall be released from all of its payment and other obligations under this Agreement. Construction Manager shall certify, in a form reasonably required by such Permitted Assignee or Approved Assignee, that the obligations of Construction Manager under this Agreement shall run to such Permitted Assignee or Approved Assignee when assignment is effective. As set forth in Article 2.6, at Owner's reasonable request, Construction Manager shall execute Lender's form of "will serve" or "consent" letter, annexed hereto as **Exhibit K**.
5. Governing Law/Venue. This Agreement is governed by the laws of the State of New York, without regard to its conflicts of laws rules. Any action between the parties arising from this Agreement shall be brought in the state or federal courts located in the State of New York, in New York County.
6. No Waiver. The failure of either party to insist upon the strict performance of any provision of this Agreement, the failure of either party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder, is not, and shall not be construed as, a waiver of any provision hereof or of any such right, option or remedy available to either party, or as a waiver for the future of any provision, right, option, or remedy, or as a waiver or subsequent breach thereof.

7. Third Parties. Except as expressly set forth herein, nothing contained in this Agreement creates or confers the authority to create a contractual or other obligation owed by Owner or Construction Manager to any third party.
8. Hazardous Materials. Construction Manager is not responsible for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project Site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, except to the extent such hazardous materials are brought onto the site by Construction Manager, and Construction Manager shall indemnify, defend and hold harmless Owner, Lender and all parties identified in Exhibit C from any losses, liability, claims, or expenses (including reasonable attorneys' fees) incurred because of hazardous materials brought onto the Project Site by Construction Manager.
9. Continuation of Work. Unless the parties expressly agree otherwise in writing, in the event that a bona fide, good faith dispute shall arise under this Agreement in connection with payments to be made on any Project Payment Application, or otherwise, Construction Manager shall continue during the pendency of such dispute to perform its duties and responsibilities under this Agreement in accordance with Owner's directives as if no dispute shall have arisen. During the pendency of any such dispute, and except as otherwise provided in this Agreement, Construction Manager shall be entitled to receive payments from Owner only on account of non-disputed items. Payments on account of disputed items shall be deferred until the final resolution of the dispute.
10. Limitations Period. No action or proceeding may be brought by Construction Manager against Owner, Architect, Design Team, Lender (if any) or any Indemnitees for any claim arising out of or based upon this Agreement (except for third-party contribution or common-law indemnity claims) unless such action or proceeding is commenced within one (1) year after Substantial Completion, or if this Agreement is earlier terminated, within one (1) year following the date of such earlier termination.
11. Notices. Every notice, demand, request, consent or approval that either party is required or desires to give to the other party shall be made in writing and delivered by hand, overnight delivery service, or certified mail, return-receipt requested and postage pre-paid, as follows:
 - a) If to Construction Manager, addressed to:

Monadnock Construction, Inc.
155 Third Street
Brooklyn, New York 11231
Attention: Greg Bauso
 - b) If to Owner, addressed to:

HPS 50th Avenue Associates LLC
60 Columbus Circle
New York, New York 10023
Attention: Frank Monterisi

Hunters Point South Housing Development Fund Corporation
902 Broadway, 13th Floor
New York, New York 10010
Attention: Michael Wadman

- c) Notices shall be considered received on: (1) the date of delivery, if by hand; (2) the first business day after deposit with an overnight delivery service, if by overnight delivery service during business hours; or (3) three business days after deposit in a receptacle maintained by the United States Postal Service, if by certified mail.
- d) Either party may change the address or addresses to which notice shall be delivered under this Agreement by giving notice in accordance with this Article.

12. Construction of Language. The language in this Agreement shall be construed according to its customary meaning within the building industry. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

13. Neutral Interpretation. This is a negotiated Agreement, and the parties to it are represented by legal counsel. Accordingly, any ambiguity in the language of this Agreement shall not be construed against either party on the theory that it was the drafter of the Agreement.

14. Captions and Titles. Captions and titles of different Articles, sections and paragraphs of this Agreement are solely to assist with the location of terms of this Agreement and are not to be construed as parts, provisions or interpretations of this Agreement.

15. Severability. If any provision of the Contract Documents is held invalid or unenforceable by a court of competent jurisdiction as to a particular party or person, it shall be deemed severed from the Contract Documents as to that particular party or person, and the remainder of the Contract Documents and the applicability of such provision to other parties or persons shall not be affected thereby.

16. Limited Recourse. Construction Manager agrees that in the event of any liability by Owner to Construction Manager, no property or assets of any officer, member, manager, director, shareholder or principal of Owner shall be subject to suit, levy, execution, attachment, or other enforcement procedure for the satisfaction of Construction Manager's rights or remedies under or with respect to (a) this Agreement, (b) the relationship of Owner and CM hereunder, or (c) any other liability of Owner to Construction Manager.

17. Equal Opportunity. Construction Manager shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. Construction Manager shall (i) assure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination, (ii) take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to, race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, and (iii) comply with all applicable federal, state and local laws regarding non-discrimination. Construction Manager shall include this obligation in all Trade Contracts. Furthermore, Construction Manager shall comply with the provisions of the New York State Housing Finance Agency's Affirmative Action, Equal Opportunity (EEO) and MWBE Requirement and the requirements of the New York City Department of Housing, Preservation and Development as set forth in Exhibit J with regard to both Equal Employment Opportunity Hiring and Minority and Women-Owned Business Utilization on this Project. Construction Manager expressly acknowledges that a failure to comply with any of the provisions including those set forth in Exhibit J shall constitute a breach of this Agreement and Construction Manager shall be responsible to Owner for any damages suffered as a result of Construction Manager's failure to comply with such provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

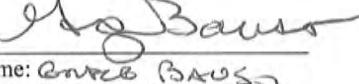
OWNER:

HPS 50TH AVENUE ASSOCIATES LLC

By: 
Name:
Title:

CONSTRUCTION MANAGER:

MONADNOCK CONSTRUCTION, INC.

By: 
Name: Bruce Bauso
Title: Sr. VP

**HUNTERS POINT SOUTH
HOUSING DEVELOPMENT FUND CORPORATION**

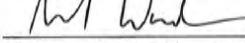
By: 
Name: MICHAEL WADMAN
Title: VP

EXHIBIT "A"
FEESCHEDULE

In consideration of Construction Manager's performance of its Services in accordance with this Agreement, Owner shall pay to Construction Manager the following fees (collectively, the "Fee") in accordance with the following terms:

A fixed fee of \$3,353,940 (Three Million Three Hundred Fifty Three Thousand Nine Hundred and Forty Dollars), which amount shall not be increased as a result of Change Orders, Time Extensions, delays to the Project or the Project Construction Schedule, or any other circumstance, and shall be payable in proportion to percentage of Work completed on the Project.

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EXHIBIT "B"
INSURANCE REQUIREMENTS

DMI\3586256.3

Exhibit B: INSURANCE

Contractor Controlled Insurance Program (“CCIP”)

Overview: Monadnock Construction, Inc., the Construction Manager/Contractor (“Monadnock”) has arranged with Aon Risk Services, Inc., of New York (the “CCIP”) a Contractors Controlled Insurance Program (“CCIP”) for this Project. Parties performing labor or services at the Project site must enroll in the CCIP unless an Excluded Party (as defined below). The CCIP will provide to Enrolled Parties (as defined below) Workers’ Compensation and Employer’s Liability Insurance, Commercial General Liability insurance, and Excess Liability insurance as summarized described below, in connection with the performance of the Work (“CCIP Coverages”).

Enrolled Parties and Their Insurance Obligations: CCIP Coverages shall cover Enrolled Parties. Enrolled Parties are Monadnock and enrolled Subcontractors.

Excluded Parties: CCIP insurance does not cover the following “Excluded Parties”: Contracts involving asbestos abatement, lead abatement, or any other environmental remediation. Contracts with architects, engineers, consultants, suppliers, vendors, or material dealers Local 3 Contractors.

Monadnock may, at its discretion, exclude or include subcontractors or lower-tier subcontractors from the CCIP.

Summary of CCIP Coverages:

The following coverage summaries are provided for information purposes only. The actual policies by the Construction Manager control the coverage available.

(1) Workers’ Compensation Insurance and Employer’s Liability Insurance

a. Coverage A – Statutory Benefits

Liability imposed by the Worker’s Compensation and/or Occupational Disease statute of the State of New York and any other state or governmental authority having jurisdiction related to the work performed on the project.

b. Coverage B – Employer’s Liability

Limits of \$1,000,000 bodily injury per accident/employee; \$1,000,000 bodily injury per disease/employee; \$1,000,000 policy limit by disease

(2) Commercial General Liability Insurance

- a. Primary Coverage: Limits for Bodily Injury, including death resulting there from and Property Damage on a per occurrence basis.
- b. \$2,000,000 Each Occurrence
- c. \$4,000,000 Products/Completed Operations Aggregate
- d. \$4,000,000 General Aggregate (reinstated annually)
- e. \$2,000,000 Personal Injury
- f. \$ 50,000 Fire Damage
- g. \$ 5,000 Medical Expenses
- h. Policy Form: "Occurrence" form

(3) Excess Liability Insurance

- (1) \$50,000,000 Each Occurrence/all insureds
- (2) \$50,000,000 Completed Operations Aggregate/all insureds
- (3) \$50,000,000 General Aggregate/all insureds (annual)

(4) Project Specific Excess Liability Insurance

- (1) \$50,000,000 Each Occurrence/all insureds
- (2) \$50,000,000 Completed Operations Aggregate/all insureds
- (3) \$50,000,000 General Aggregate/all insureds (annual)

Additional Insurance Required From Enrolled Parties and Excluded Parties: Monadnock shall obtain and maintain, and shall require each of their Subcontractors to obtain and maintain, the insurance coverage specified in this in a form and from insurance companies reasonably acceptable to Owner. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

As to eligible and Enrolled Parties, the workers' compensation, employer's liability, and commercial general liability insurance required by this Article shall only be for off-site activities or operations not insured under the CCIP Coverages.

- (1) Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000.
- (2) Statutory Workers' Compensation Insurance and Employer's Liability insurance with statutory limits as required by law, including Maritime coverage, if appropriate, and Employer's Liability limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit.

(3) Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy CG 0001 ("Occurrence Form"). The limits shall apply per project and per location. The limits shall be:

<u>Enrolled Parties/Excluded Parties</u>	
Each Occurrence	\$2,000,000/ \$2,000,000
General Aggregate	\$4,000,000/ \$4,000,000
Products/Completed Operations Aggregate	\$2,000,000/ \$2,000,000
Personal/Advertising Injury Aggregate	\$2,000,000/ \$2,000,000

(4) Excess Liability on a Per Project basis with coverage no less restrictive than required above with a minimum limit per occurrence as set forth below:

Prime Contractors	\$10,000,000
Subcontractors of every tier	\$ 5,000,000

(5) Aviation and/or Watercraft Liability Insurance if required by Owner, in a form and from an insuring entity satisfactory to Owner with minimum limits of \$50,000,000 any one occurrence.

(6) Contractor's Pollution Liability Insurance, if required by Owner, in a form and with limits of liability, and from an insuring entity satisfactory to Owner.

If transporting hazardous waste/materials from the Site, appropriate MCS-90 Endorsement must be attached and supplied to Contractor on a primary basis with \$5,000,000 limits of liability.

(7) Professional liability insurance if required by Owner, in a form and from an insuring entity and with limits of liability satisfactory to Owner.

(8) Each policy required under this Article, except the workers' compensation policy, shall name Owner and its parent, subsidiary and affiliated companies and entities listed on Exhibit C, and their respective officers, agents, shareholders, and employees of each, and any additional entities as Owner may request as additional insureds. The additional insured endorsement shall state that the coverage provided to the additional insured is primary and non-contributing with respect to any other insurance available to the additional insured. The Commercial General Liability insurance additional insured endorsement shall be written on Form CG 20 10 11 85 (Form B) or its equivalent. The insurance required shall be written with insurance carriers duly authorized and admitted to transact that class of insurance in each state(s) in which the Construction

Manager/Contractor, or Subcontractor performs operations related to the Work. Such insurance shall be in a form and with an insurer with an A.M. Best rating of A, X, or better.

Owner reserves the right to request a copy of all policies stated herein. Such copies must be certified by Construction Manager/Contractor and Subcontractors of every tier, insurance broker as true and original copies.

Construction Manager/Contractor Representations and Warranties to Owner: Construction Manager/Contractor represents and warrant to Owner or behalf of itself and their Subcontractors:

- (1) That all information it submits to Owner shall be accurate and complete.
- (2) That they have, on behalf of itself and their Subcontractors, had the opportunity to read and analyze copies of the CCIP binders and specimen policies. Any reference or summary in the Contract, this Exhibit, the Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of CCIP Coverages and/or potential applicability to any potential claim or loss is for reference only.

Construction Manager/Contractor's Election to Modify or Discontinue CCIP: Construction Manager/Contractor may, for any reason, modify the CCIP Coverages, discontinue the CCIP, or request that their Subcontractors withdraw from the CCIP upon thirty (30) days written notice. Upon such notice Construction Manager/Contractor and/or one or more of their Subcontractors shall obtain and thereafter maintain at Owner's expense (not to exceed the applicable Cost of Add Alternative Insurance bid by Construction Manager/Contractor at time of award of Contract. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to Owner's approval.

Waiver of Subrogation: Where permitted by law, Construction Manager/Contractor hereby waive all rights of recovery under subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Owner, and its parent, subsidiary and affiliated companies, including without limitation, the OCIP Administrator, its or their officers, agents, shareholders or employees of each, if any, and any other contractor or subcontractor performing Work or rendering services on behalf of Owner in connection with the planning, development and construction of the Project. Where permitted by law, Construction Manager and Contractor shall also require that all Construction Manager or Contractor maintained insurance coverage, with the exception of workers' compensation, related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against Construction Manager and Contractor together with the same parties referenced immediately above in this Article. Construction Manager and Contractor shall require similar written express waivers and insurance clauses from each of their Subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of

indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

Duty of Care: Nothing contained in this Exhibit or the Insurance Manual shall relieve Construction Manager/Contractor or any of their Subcontractors of their respective obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract Documents.

Conflicts: In the event of a conflict between the provisions of this Exhibit and the provisions of the Agreement or other Contract Documents, the provisions of this Exhibit shall govern, then the provisions of the Agreement and its other related Contract Documents, then the provisions of the Insurance Manual.

Safety: Construction Manager/Contractor shall be solely responsible for safety on the Project. Construction Manager/Contractor has established a safety program that, at a minimum, complies with all local, state and federal safety standards, and any safety standards established by Owner for the Project, including the Project Safety Standards.

Builder's Risk Insurance: Owner shall provide Builder's Risk insurance insuring the interests of Owner, Construction Manager/Contractor and Subcontractors, and other persons or interests as Owner may designate covering "all risk" perils, excluding earthquake and flood, with limits as determined appropriate by Owner in its sole discretion. Construction Manager/Contractor shall pay to Owner, or Owner may withhold from payments to Construction Manager/Contractor, a maximum of up to \$25,000 for each loss payable under the Builder's Risk Policy attributable to Construction Manager/Contractor's Work, acts or omissions, or the Work, acts or omissions of any of Construction Manager/Contractor's subcontractors, or any other entity or party for whom Construction Manager/Contractor may be responsible ("Builder's Risk Obligation"). The Builder's Risk Obligation shall remain uninsured by Construction Manager or Contractor and will not be covered by the CCIP Coverages. The builder's risk/property insurance policy includes a waiver of subrogation in favor of the CCIP Coverages. Owner, Construction Manager/Contractor waive all rights against each other and against separate contractors, if any, and any of their subcontractors sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property or Builder's Risk insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as fiduciary. This waiver applies only to the extent that proceeds are, in fact, realized as a result of a claim against the policy. Construction Manager/Contractor shall require similar waivers in favor of the Owner from any of their Subcontractors, Sub-subcontractors, suppliers, etc.

Pollution Liability Insurance: Should conditions at the project so require, Owner may require a Contractor's Pollution Liability insurance, as applicable to the work to be performed, covering claims from third-party injury and property damage as a result of

pollution conditions emanating on-site, under site or off site, arising out of its operations and completed operations. Policy Limits, Coverage, Terms and Conditions shall be determined by and at the sole discretion of Owner.

Insurance in Absence of CCIP

Construction Manager/Contractor shall obtain and maintain, and shall require each of their Subcontractors to obtain and maintain, the insurance coverage specified in a form and from insurance companies reasonably acceptable to Owner. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

All insurance shall include on-site and off-site activities or operations.

- (1) Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000.
- (2) Statutory Workers' Compensation Insurance and Employer's Liability insurance with statutory limits as required by law, including Maritime coverage, if appropriate, and Employer's Liability limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit.
- (3) Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy CG 0001 ("Occurrence Form"). The limits shall apply per project and per location. The limits shall be

Each Occurrence	\$2,000,000
General Aggregate	\$4,000,000
Products/Completed Operations Aggregate	\$4,000,000
Personal/Advertising Injury Aggregate	\$2,000,000
10 yr Products & Completed Operations Extension	

- (4) Excess Liability on a Per Project basis with coverage no less restrictive than required above with a minimum limit per occurrence as set forth below:

Construction Manager	\$100,000,000
Prime Contractors	\$10,000,000
Subcontractors of every tier	\$ 5,000,000

- (5) Aviation and/or Watercraft Liability Insurance if required by Owner, in a form and from an insuring entity satisfactory to Owner with minimum limits of \$50,000,000 any one occurrence.
- (6) Contractor's Pollution Liability Insurance, if required by Owner, in a form and with limits of liability, and from an insuring entity satisfactory to Owner.
If transporting hazardous waste/materials from the Site, appropriate MCS-90 Endorsement must be attached and supplied to Contractor on a primary basis with \$5,000,000 limits of liability.
- (7) Professional Liability insurance if required by Owner, in a form and from an insuring entity and with limits of liability satisfactory to Owner.
- (8) Each policy required under this Article, except the workers' compensation policy, shall name Owner and its parent, subsidiary and affiliated companies, the entities listed on Exhibit C and their respective officers, agents, shareholders, and employees of each, and any additional entities as Owner may request as additional insureds. The additional insured endorsement shall state that the coverage provided to the additional insured is primary and non-contributing with respect to any other insurance available to the additional insured. The Commercial General Liability insurance additional insured endorsement shall be written on Form CG 20 10 11 85 (Form B) or its equivalent. The insurance required by this Article 11.1.8 shall be written with insurance carriers duly authorized and admitted to transact that class of insurance in each state(s) in which the Construction Manager, Contractor, or Subcontractor performs operations related to the Work. Such insurance shall be in a form and with an insurer with an A.M. Best rating of A, X, or better. All insurance shall conform to any additional Owner's requirements outlined in the Insurance Manual and be acceptable to Owner. Construction Manager/Contractor shall provide certificates of insurance coverage to Owner as required.

Owner reserves the right to request a copy of all policies stated herein. Such copies must be certified by Construction Manager/Contractor's and Subcontractor's of every tier, insurance broker as true and original copies.

Named Insured and Additional Insured

For Entire Project

Named Insured

HPS 50th Avenue Associates LLC – Parcel A

HPS Borden Avenue Associates LLC - Parcel B

Hunters Point South Housing Development Fund Corporation – Parcel A

Hunters Point South Borden Housing Development Fund Corporation – Parcel B

Additional Insured:

HPS Associates, LLC

HPS Borden Avenue Associates LLC

HPS 50th Avenue Associates LLC

Monadnock HPS Associates LLC

Phipps HPS Associates LLC

Related HPS Associates LLC

New York City Economic Development Corporation

New York City School Construction Authority

City of New York and New York City Department of Housing Preservation and Development

LiRo Engineers, Inc.

Ove Arup & Partners, Inc.

Galvin Bros. Inc. /Madhue Contracting, Inc. a joint venture

The State of New York

Federal Highway Administration

New York State Department of Transportation

New York City Department of Parks and Recreation

New York City Department of Transportation

Wells Fargo Bank, NA, as Administrative Agent for lenders and assigns

Bank of America, N.A.

Citibank, N.A.

New York City Transit Authority, Manhattan & Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority MTA Capital Construction Co., and Metropolitan Transit Authority

HPS Dev Fee Co LLC

HPS 50th Avenue Owner LLC

HPS Borden Avenue Owner LLC

Hunters Point South Housing Development Fund Corporation

Hunters Point South Borden Housing Development Fund Corporation

Phipps HPS LIHTC Associates, Inc.

HPS 50th Avenue LIHTC Manager LLC

HPS Borden Avenue LIHTC Manager LLC

HPS Associates B Share Investor LLC

Related Management Holdco LLC

Wells Fargo Affordable Housing Community Development Corporation and its successors and assigns, ATIMA

HPS 50th Avenue LIHTC Associates LLC

HPS Borden Avenue LIHTC Associates LLC

Parcel A only:

Named Insured:

HPS 50th Avenue Associates LLC – Parcel A

Hunters Point South Housing Development Fund Corporation – Parcel A

Additional Insured:

HPS Associates, LLC

HPS 50th Avenue Associates LLC

Monadnock HPS Associates LLC

Phipps HPS Associates LLC

Related HPS Associates LLC

New York City Economic Development Corporation

City of New York and New York City Department of Housing Preservation and Development

LiRo Engineers, Inc.

Ove Arup & Partners, Inc.

Galvin Bros. Inc. /Madhue Contracting, Inc. a joint venture

The State of New York

Federal Highway Administration

2 Named Insured and Additional Insured

New York State Department of Transportation

New York City Department of Parks and Recreation

New York City Department of Transportation

Wells Fargo Bank, NA, as Administrative Agent for lenders and assigns

Bank of America, N.A.

New York City Transit Authority, Manhattan & Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority MTA Capital Construction Co., and Metropolitan Transit Authority

HPS Dev Fee Co LLC

HPS 50th Avenue Owner LLC

Hunters Point South Housing Development Fund Corporation

Phipps HPS LIHTC Associates, Inc.

HPS 50th Avenue LIHTC Manager LLC

HPS Associates B Share Investor LLC

Related Management Holdco LLC

Wells Fargo Affordable Housing Community Development Corporation and its successors and assigns, ATIMA

HPS 50th Avenue LIHTC Associates LLC

Parcel B only:

Named Insured

HPS Borden Avenue Associates LLC - Parcel B

Hunters Point South Borden Housing Development Fund Corporation – Parcel B

Additional Insured:

HPS Associates, LLC

HPS Borden Avenue Associates LLC

Monadnock HPS Associates LLC

Phipps HPS Associates LLC

Related HPS Associates LLC

New York City Economic Development Corporation

New York City School Construction Authority

City of New York and New York City Department of Housing Preservation and Development

LiRo Engineers, Inc.

3 Named Insured and Additional Insured

Ove Arup & Partners, Inc.

Galvin Bros. Inc. /Madhue Contracting, Inc. a joint venture

The State of New York

Federal Highway Administration

New York State Department of Transportation

New York City Department of Parks and Recreation

New York City Department of Transportation

Citibank, N.A.

New York City Transit Authority, Manhattan & Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority MTA Capital Construction Co., and Metropolitan Transit Authority

HPS Dev Fee Co LLC

HPS Borden Avenue Owner LLC

Hunters Point South Borden Housing Development Fund Corporation

Phipps HPS LIHTC Associates, Inc.

HPS Borden Avenue LIHTC Manager LLC

HPS Associates B Share Investor LLC

Related Management Holdco LLC

Wells Fargo Affordable Housing Community Development Corporation and its successors and assigns, ATIMA

HPS Borden Avenue LIHTC Associates LLC

EXHIBIT "D"
PARTIAL LIEN WAIVER AND RELEASE FORM

Affidavit made this _____ day of _____, 20____ to the _____ (the "Owner") by _____ ("Construction Manager") for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of the _____'s (the "Project") located at _____ (the "Property") pursuant to an agreement between the Owner and Construction Manager dated _____, (the "Agreement"), for and in consideration of the sum of _____, (the "Partial Payment") representing the amount presently approved as payable under Invoice # _____ dated _____, for work, labor, services, material or equipment furnished to Owner under the Agreement, the receipt of which, by Construction Manager from Owner, is hereby acknowledged; the Construction Manager does hereby waive, release, remise and relinquish the right to claim or file a mechanic's or other lien against the Property or any part thereof for all work, labor, services supplied by the Construction Manager, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Construction Manager, up to and including the _____ day of _____, _____, excepting only claims currently unresolved for the total amount of _____ (\$_____) as described below for which written notice has been provided to Owner.

Partial Payment to Construction Manager \$_____.
Cumulative Payment to Construction Manager (inclusive of Partial Payment) \$_____.

The Construction Manager hereby agrees to indemnify and hold Owner and all entities listed in the Agreement harmless from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any third party for work, labor, services materials and/or equipment which directly or indirectly relates to that which was performed by the Construction Manager and/or its agents or subcontractors and from and against any claims relating to any work, labor, services, materials and/or equipment allegedly performed by the Construction Manager and/or its agents or subcontractors. The Construction Manager hereby certifies and warrants that it has fully paid to date for all work, labor, services, materials and/or equipment provided to it in connection with the aforesaid Project, except for those listed below (List all payables or state "None"):

Construction Manager further affirms that it has received all payments to date as a trust fund for the purpose of paying all claims for labor and/or materials and will apply all payments received for said purpose before using any part thereof for any other purpose.

IN WITNESS WHEREOF, this Waiver, Release and Discharge has been executed this _____ day of _____, 20____.

Construction Manager: _____

Sworn to before me this _____ day of _____, 20____.

_____(Notary Public)

Exhibit D

MONADNOCK
CONSTRUCTION, INC.

155-3rd Street, Brooklyn, NY 11231
Fax: 718-802-1109

718-875-8160
www.moncon.com

PARTIAL LIEN WAIVER

Check Date: Check Date
Application: #
Project: Project Name
Project Address
Project City, State, Zip

Contractor:

Premises: _____

General Contractor/Construction Manager:

Monadnock Construction, Inc. _____

Contract Work:

Contract Date:

Original Contract Amount:

Change Order Amounts:

Adjusted Contract Amount:

Amount of Work Done to Date:

Retainage Amount Not Yet Due:

Net Amount Due to Date:

Total Payments Received To Date:

The undersigned contractor, subcontractor or supplier hereby acknowledges receipt of \$ _____ (cash only and not in equivalents or other agreements) and aggregate payments equal to the Total Payments received to Date stated above. DOES HEREBY CERTIFY AND ACKNOWLEDGE that it has received all sums due owing to it for work performed or materials supplied at or in connection with the Project to the date of all prior requisitions and DOES HEREBY FOREVER RELEASE AND WAIVE for itself, its successors and assigns (a) any and all rights, claims and demands it has or may have against the General Contractor or the Borrower identified above, and their respective successors and assigns (collectively, the "Released Parties") to the date of all prior requisitions and (b) all right which it has or may have pursuant to the New York State Lien law to file any lien against the Project or any interest of any of the Released Parties therein or any other assets or interest of any of the Released Parties.

The undersigned represents that it has fully paid all its subcontractors, laborers, materialmen and any other person retained or hired by the Company on or in connection with Project to date (including without limitations all union benefits) and the undersigned agrees to indemnify and save and hold the Released Parties harmless from any and all claims and expenses, including attorney's fees that may be made by any of the undersigned subcontractors, laborers, materialmen for any damages, injury of liability arising from or in connection with the performance of the work or the furnishing of materials or any of its or their subcontractors, laborers, materialmen, agents, servants, and employees in performance of the Subcontractor or Purchase Order, or otherwise in connection with any of the work performed or materials furnished upon or in connection with the Project or any breach or default by the undersigned hereunder. the event a lien is filed against the property in connection with the subcontractor's work, the undersigned agrees to immediately post a bond in satisfaction of the lien and to proceed to discharge the lien and/or satisfy any judgement or award rendered. Any or all of the Released Parties may at their option (I) post a bond, and discharge such lien (II) defend any action related to lien, (III) pay and satisfy any judgement or award and the undersigned shall be responsible for and pay such Released Parties all direct and indirect costs thereof including attorney fees. The undersigned further stipulates that the signatory hereto is an authorized officer with the full power to execute this waiver and release claim.

Duly authorized, executed and delivered by the undersigned this _____ day of _____, 20 ____.

NOTARIZED BY

Contractor Company Name

EXHIBIT "E"
FINAL LIEN WAIVER AND RELEASE FORM

Affidavit made this _____ day of _____, 20____ to _____ ("Owner"), by _____ ("Construction Manager") for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of _____ (the "Project") located at _____ (the "Property") pursuant to the agreement executed by Construction Manager dated _____, 20____ (the "Agreement"), for and in consideration of the sum of _____, (the "Final Payment") representing the amount presently approved as the final and total amount payable under Requisition # _____ dated _____, for work, labor, services, material or equipment furnished under the Agreement in connection with the Project, the receipt of which, by Construction Manager from Owner, is hereby acknowledged; the Construction Manager does hereby waive, release, remise and relinquish the right to claim or file a mechanic's or other lien against the Property or any part thereof for all work, labor, services supplied by the Construction Manager and does so covenant in recognition of the fact that final payment has been received for all work, labor and services supplied by Construction Manager, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Construction Manager, up to and including the _____ day of _____, 20____.

Final Payment to Construction Manager \$_____.
Cumulative Payment to Construction Manager (inclusive of Final Payment) \$_____.

The Construction Manager hereby agrees to indemnify and hold Owner and all entities listed in the Agreement harmless from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any third party for work, labor, services materials and/or equipment which directly or indirectly relates to that which was performed by the Construction Manager and/or its agents or subcontractors and from and against any claims relating to any work, labor, services, materials and/or equipment allegedly performed by Construction Manager and/or its agents or subcontractors. The Construction Manager hereby certifies and warrants that it has fully paid to date for all work, labor, services, materials and/or equipment provided to it in connection with the aforesaid Project, except for those listed below (List all payables or state "None"):

Construction Manager releases and discharges Owner from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, arising from or in connection with the Property which against Owner the Construction Manager ever had, now have or hereafter can, shall or may have, for upon, or by reason of any matter, claims or causes of action whatsoever from the beginning of the world to the date of this Final Waiver and Release.

Construction Manager further affirms that it has received all payments to date as a trust fund for the purpose of paying all claims for labor and/or materials and will apply all payments received for said purpose before using any part thereof for any other purpose.

IN WITNESS WHEREOF, this Final Waiver and Release has been executed this _____ day of _____, 20____.

Construction Manager: _____

Sworn to before me this
____ day of _____, 20____.

(Notary Public)

EXHIBIT "F"
FORM OF TRADE CONTRACT

[To Be Inserted]

DMI\3586256.3

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year, year)

BETWEEN the Contractor:

(Name, legal status, address and other information)

Monadnock Construction, Inc.
155-3rd Street
Brooklyn, New York 11231

and the Subcontractor:

(Name, legal status, address and other information)

SAMPLE

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated:

with the Owner:

(Name, legal status, address and other information)

OWNER

for the following Project:

(Name, location and detailed description)

PROJECT

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:

(Name, legal status, address and other information)

ARCHITECT

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™-2007, A201, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201-2007-A201 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within ~~five~~ ~~three~~ working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, ~~after three days following receipt by the Subcontractor of an additional written notice~~ and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples, ~~Samples~~, ~~Mock-ups~~ and similar submittals required by the Subcontract Documents ~~or the Contractor~~ with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, ~~required by the Contractor~~, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, ~~or the Contractor~~,

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specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days one day an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

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§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.5 WARRANTY

The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes refined for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Document.

§ 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

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§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Section 4.1.5 and except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: Other (Specify)

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

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§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 - TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ~~ten-day~~~~five-day~~ period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201-2007 provided the Owner accepts the assignment. A201 provided the Owner accepts the assignment, subject to the provision of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract. Any requests for assignment must be made by written notification to the Contractor.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than _____ days after the Subcontractor's Date of Commencement.

(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

With all possible speed, Subcontractor will diligently perform the work, and maintain men in sufficient numbers and materials and equipment in sufficient quantities to accomplish the rapid completion of the job.

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for work completed through the end of the prior cycle, less 10% retainage, will be paid within 3 working days of receipt of payment from Owner by Contractor.

§ 11.3 Provided an application for payment is received by the Contractor not later than the TBA day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Owner. If the Architect does not issue a certificate for payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Sections 11.7, 11.8 and 11.9.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Payment made out in such detail as the Contractor and Subcontractor may agree upon or as required by the Contractor and supported by such evidence as the Contractor may require. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt

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application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor, Contractor, and other additional insureds from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract.

See Rider 3, Insurance and Contractor's Controlled Insurance Program Procedure Manual for detailed insurance information.

Type of insurance or bond	Limit of liability or bond amount (\$0.00)/(\$ 0.00)
---------------------------	--

§ 13.2 Coverages, whether:

Coverage shall be written on an occurrence or claims-made basis, basis and shall be maintained without interruption from the date of commencement of the Subcontractor's Work Subcontractor's work until the date of final payment and termination of any coverage payment. Coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage Subcontractor shall include completed operations as specified in the Prime Contract. All insurance except Completed Operations must be on an occurrence basis.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information

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concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:

(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount (\$0.00)(\$ 0.00)	Bond delivery date	Bond form

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any (\$0.00)(\$ 0.00)

See Rider 1, Conditions

§ 14.2 Specific working conditions:

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(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 15.2 Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%—NONE

§ 15.3 Retainage and any reduction thereto are as follows:

Retainage to be 10%. Retainage shall be reduced by the Contractor to the Subcontractor to the extent and as it is reduced by the Owner to the Contractor.

§ 15.4 The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7.

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401—2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

See Rider 4, Contract Documents

Modification	Date
--------------	------

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™—2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:

(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. Rider 1, Conditions
2. Rider 2, Project Safety Manual
3. Rider 3, Insurance and Contractor's Controlled Insurance Program
4. Rider 4, Contract Documents, Current Drawing Log
5. Rider 5, Scope of Work
6. Rider 6, Compliance

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This Agreement entered into as of the day and year first written above.

CONTRACTOR (Signature)

(Printed name and title)

SUBCONTRACTOR (Signature)

(Printed name and title)

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 12:17:11 on 12/04/2012 under Order No. 6732828170_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A401™ – 2007, Standard Form of Agreement Between Contractor and Subcontractor, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

Monadnock Construction, Inc.

Subcontract Rider 1, Conditions

Notwithstanding anything to the contrary contained in the Subcontract, the following terms and conditions apply:

Article 3, Services Provided by the Contractor

- A. Monadnock shall provide temporary power, light, and water.
- B. Subcontractor shall provide portable generators if required due to the lack of electrical services at the time of the work.
- C. If there is an interruption to any site services provided by Monadnock there shall be no extensions of time, unless such interruption lasts more than one day and substantially effects the work of the Subcontractor. There shall be no extra costs paid for walk-up time that may be incurred as a result of vertical transportation breakdown, if such is provided by Monadnock. The Subcontractor and its employees shall continue to work and walk to the place of the work, if necessary, during any breakdown.
- D. Subcontractor's shanties, if any, shall be of fireproof construction and shall be placed and relocated when and where directed by Monadnock. Light and power for such shanties shall be the responsibility of this Subcontractor.

Article 4.1, Execution and Progress of the Work

- A. Subcontractor has visited the site and accepts all conditions "as-is" including but not limited to buildings, properties, streets, sidewalks, etc.
- B. Subcontractor shall maintain the construction schedule as established by Monadnock, and shall properly staff the project to keep up with job progress. Time is of the essence, and, in the event overtime or other costs are required to keep abreast of the construction schedule, it shall be performed at no additional cost to Monadnock.
- C. Subcontractor shall perform work when and as directed by Monadnock. Monadnock may require Subcontractor to perform work on any area at different times and/or intervals including portions out of sequence, to temporarily omit a portion of the work and later fill in such portions when directed. Out of sequence and comeback work shall be at no additional cost to Monadnock.
- D. Subcontractor shall provide all proper supervision, including management, engineering, expediting and field operations. Subcontractor's work shall be performed by qualified mechanics and supervised by qualified foremen.
- E. Subcontractor shall coordinate all deliveries to the site with Monadnock, and shall provide all necessary equipment and personnel for expeditious unloading, storage, distribution and protection. Subcontractor shall provide flagmen or other personnel necessary to maintain traffic and safeguard the public.
- F. Subcontractor shall adequately protect all material and store as directed by the Contractor.

- G. Subcontractor's work shall be performed by union labor, and by trades having jurisdiction. Should questions of union jurisdiction arise the subcontractor shall immediately take measures to settle any disputes and shall employ such labor as may be determined to have jurisdiction, without additional cost. Shall Subcontractor fail to take expeditious action, the Subcontractor shall be responsible to Monadnock for any time lost and costs incurred.
- H. Subcontractor shall leave debris in one pile on each floor. Monadnock shall provide carting for debris.
- I. Subcontractor acknowledges and recognizes community labor factors, and agrees to provide harmony with same.

Article 4.2, Laws, Permits, Fees and Notices

Subcontractor shall provide necessary coordination, testing, inspections by and for, and permits and signoffs from any governmental agencies, utilities, etc. with jurisdiction over its trade, including Department of Buildings filings and signoffs. Subcontractor shall cooperate fully with any testing and inspection agency retained by the Owner or Monadnock, including performing any remedial work recommended by the inspector.

Article 4.3, Safety Precautions and Procedures.

- A. Subcontractor shall cooperate with and abide by the Monadnock Subcontractor Safety Disciplinary Program and Project Safety Manual.
- B. Any safety concerns brought to the Subcontractor's attention by Monadnock shall be corrected immediately. If Subcontractor does not take corrective action within the time required by Monadnock, Monadnock may remedy the situation at Subcontractor's expense.
- C. Subcontractor shall submit copies of their Safety and Hazard Communication Programs along with all appropriate Material Safety Data Sheets to Monadnock prior to start of work. Subcontractor shall notify Contractor of any hazardous material it intends to use on the job.
- D. This is a Hard Hat job. All Subcontractor's personnel on site shall wear hard hats at all times.
- E. Subcontractor shall hold Toolbox Safety Meetings for its workers on a regular basis, and provide record of such meetings to Monadnock.
- F. Subcontractor shall provide in-line GFCI's for all power tools and equipment used by Subcontractor's personnel, and shall properly maintain all power tools and extension cords used by Subcontractor's personnel.
- G. Subcontractor shall immediately properly reinstall or repair as required any protection which it removes or causes to be removed for its work or other reasons, or bear the cost of such reinstallation or repair.
- H. Alcohol, drugs and weapons will not be allowed on the site, and shall be cause for immediate expulsion from the site by Monadnock.

Article 4.4, Cleaning Up

Subcontractor shall leave its debris in one pile on each floor. Monadnock shall provide carting for debris removal.

Article 4.5, Warranty

The Subcontractor agrees to guarantee to the Owner and Monadnock all work covered by this agreement, to run for a period of one (1) year from the date of initial occupancy, and shall furnish all material, labor, and equipment required during this period to correct defects or errors in the work, material, and equipment without charge. For all mechanical work (plumbing, heating, sprinkler, electrical, ventilation and air conditioning) this guaranty shall be for two years.

Article 5, Changes in the Work

- A. Any change shall be approved by Monadnock prior to performing the work, including any authorization for time-and-materials work. Any extra work performed without prior approval will not be reimbursed.
- B. Subcontractor shall have any work tickets signed by Monadnock's Superintendent on the same day the work is performed, with a copy for Monadnock's records. This signature is limited to confirming that work was done and/or verifying time and materials expended. The actual determination that such work is a change to the Subcontract shall be established by Monadnock's Project Manager.
- C. Subcontractor shall present an invoice for any change, including T&M work, within thirty (30) days. After thirty (30) days, all claims for change will be rejected.
- D. In the event Contract Documents are revised, Subcontractor shall notify Monadnock of any proposed change to Subcontract price within 15 calendar days from receipt of said documents. If such notice is not made within this time period, then the revised documents shall become part of this Subcontract with no change in Subcontract Price.

Article 8, The Work of This Subcontract.

- A. Subcontractor includes all work or materials that may be reasonably inferred and needed to make its work complete or that may be required by local code or good construction practice including but not limited to any necessary equipment, hoisting, scaffold, bracing, shoring, cutting, chopping or other work.
- B. Subcontractor shall perform all layout required for the installation of its work. Base lines and benchmarks shall be provided by Monadnock.
- C. Subcontractor shall pay all applicable sales and use taxes.
- D. Cost of Master Mechanic, if required, shall be prorated among all Subcontractors on the job who contribute to the requirement of a Master Mechanic by the number of Operating Engineers each Subcontractor employs. The Master Mechanic shall be employed by the Subcontractor employing the most Operating Engineers on the job, or if an equal number of Operating Engineers are employed by more than one Subcontractor then by the last Subcontractor on the job whose operations require a Master Mechanic. Contractor shall reimburse employing Subcontractor and deduct appropriate sums from the payments to contributing Subcontractors.
- E. Cost of overtime for Teamster Foreman, Operating Engineers, Elevator Mechanics, Electricians, Plumbers, Laborers, or any other necessary standby trades caused by Subcontractor's deliveries, unloading, or work operations required to maintain the schedule shall be charged to Subcontractor. If such overtime is required by the Contractor to accelerate the schedule, the cost of the overtime shall be borne by the Contractor.

Monadnock Construction, Inc.
PROJECT SAFETY MANUAL

I, _____, _____, of _____,
(Name) (Title) (Contractor)

hereby acknowledge receipt of the Monadnock Construction, Inc. Project Safety Manual, Mandatory OSHA 10 Hour Training Requirement Memo and Smoking Rules on Construction Sites which is hereby made part of the contract.

Signature

Initial	
Contractor	Subcontractor

Rider 3, Insurance

Contractor's Controlled Insurance Program ("CCIP")

Monadnock Construction, Inc. has implemented a Contractor Controlled Insurance Program (CCIP), which includes the following types and minimum amounts of insurance, naming as Insureds Monadnock Construction, Inc. and enrolled Contractors, Subcontractors, Sub-Subcontractors ("Contractors") of any tier. Said insurance shall apply only to the work operations of an insured at the designated jobsite. Insurance coverage provided by Monadnock Construction, Inc. under the CCIP shall not extend to the activities and products of suppliers, material vendors, haulers, truckers, and owner/operators whose employees perform no on-site work or are engaged solely in loading, unloading, stocking, testing or hauling of equipment, supplies, or materials. Such persons or entities shall be required to provide their own insurance, as specified in Section B of the Insurance Requirements.

SECTION A CONTRACTOR CONTROLLED INSURANCE PROGRAM (CCIP) COVERAGE

1. On-Site Workers' Compensation and Employer's Liability:

Coverage A

Statutory Benefits

Liability imposed by the Workers' Compensation and/or Occupation disease statute of the State of New York and any other governmental authority having jurisdiction or if related to the work performed on the project.

Coverage B

Employer's Liability

Limits of \$1,000,000 bodily injury per accident/employee; \$1,000,000 bodily injury per disease/employee; \$1,000,000 policy by disease

Extensions of Coverage

Other States Endorsement

Voluntary Compensation

Thirty (30) day written notice of cancellation, non-renewal or material change

Borrowed Servant Coverage – as necessary

Alternate Employers Endorsement – as necessary

Amendment Notice of Occurrence

Initial

Contractor	Subcontractor

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2. On-Site Commercial General Liability Insurance:

Occurrence Form including:

Coverage A - Bodily Injury and Property Damage
Coverage B - Personal and Advertising Injury
Coverage C - Medical Payments

Limits of Liability (Aggregates Reinstated Annually)

General Aggregate (Other than Products/Completed Operations)	\$4,000,000
Products/Completed Operations	\$4,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence Limit	\$2,000,000
Fire Damage Legal Liability	\$ 5,000
Medical Payments	\$ 100,000

This insurance provides independent contractors coverage, contractual liability (including deletion of personal injury and railroad exclusions), premises/operations, products/completed operations, blanket explosion, collapse and underground coverage, severability of interests provision and a waiver of subrogation. This policy also provides Extended Products/Completed Operations – Five (5) years after final acceptance by the owner or five (5) years after the entire project is placed into operations. Notice and Knowledge of Occurrence is also included.

3. Excess Liability Insurance

In addition, limits of \$25,000,000 each occurrence and \$25,000,000 Annual Aggregate will be provided. This insurance will contain five (5) years Extended Products/Completed Operations Coverage.

Each enrolled Contractor will receive a Certificate of Insurance evidencing coverage provided under this program.

4. Builders Risk

Builder's Risk Insurance is not provided under the CCIP.

5. Policy Period

The policy period is effective on your start date and will expire on the annual expiration date of the CCIP policy. If you work has not been completed, a renewal policy/certificate of insurance will be issued and forward.

Initial	
Contractor	Subcontractor

6. Coverage Expiration

Except for Completed Operations, it is intended the insurance furnished by the Monadnock Construction, Inc. CCIP will discontinue for each subcontractor upon certified completion and final acceptance of their work.

The CCIP may also be discontinued in the event the project is substantially delayed for an extended period of time or the project is terminated for any cause.

7. Availability of Coverage

Subject to market availability all insurance specified herein shall be maintained continuously under the project final completion as certified by the Architect and until accepted and approved by Monadnock Construction, Inc. All insurance shall provide for the Owner to take occupancy of the work or any party thereof during the term of said insurance. If coverage is diminished or cannot be renewed due to market constraints and limitations, or if there is any material change in any policy or condition all insured contractors will be notified within in the thirty day cancellation or non-renewal period provided in the policies.

In the event any contractor must subsequently provide their own coverage, either due to market constraints after the CCIP coverage was officially discontinued, reimbursement for such coverages will be subject to the commercial terms and conditions as set for in this contract or any amendment thereto.

8. Insurance Policies and Certificates

Aon, the insurance broker and CCIP Administrator, will issue Certificates of Insurance evidencing Workers Compensation, Commercial General Liability and Excess Liability to each enrolled contractor. Copies of liability policies will be made available to enrolled contractors upon written request to Aon.

9. Governing Conditions

In the event of conflict between Insurance Policies Terms and Conditions and this Addendum concerning Coverage Conditions, the insurance policies will govern.

10. Waiver of Subrogation

Monadnock Construction, Inc., and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under this article or any other insurance actually carried by the Owner or Contractor respectively. The Contractor shall require similar waivers by lower-tier subcontractors in accordance with this agreement. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

Initial	
Contractor	Subcontractor

Section B
Contractor Furnished Insurance
Excluded Parties Insurance

Coverages provided under the CCIP apply only to on-site work. It is necessary for the Contractors and their sub-contractors to maintain the following insurance coverages for off-site operations. Excluded parties and their sub-contractors must maintain the following insurance coverages for off-site and on-site operations:

1. Workers Compensation and Employers Liability:

Coverage A

Statutory Benefits

Liability imposed by the Workers' Compensation and/or Occupation Disease state and statutes and any other governmental authority having jurisdiction or if related to the work performed on the project.

Coverage B

Employer's Liability

Limits of \$1,000,000 bodily injury per accident/employee; \$1,000,000 bodily injury per disease/employee; \$1,000,000 per disease

2. Commercial General Liability and Excess Insurance

Occurrence Form including:

Coverage A - Bodily Injury and Property Damage

Coverage B - Personal and Advertising Injury

Coverage C - Medical Payments

Limits of Liability (Aggregates Reinstated Annually)

General Aggregate (Other than Products/Completed Operations)	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence Limit	\$1,000,000

This insurance shall also contain the following endorsements:

- General Aggregate applies "per project"
- Additional Insureds on a primary and non-contributory basis
- Additional Insureds: See Exhibit A
- Waiver of Subrogation

Initial	
Contractor	Subcontractor

Limits of Liability (Umbrella Insurance)

Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

3. Business Automobile Liability

Providing coverage for bodily injury and property damage with respect to all vehicles used in the performance of the services, whether owned, non-owned, leased, hired, or assigned.

Limits of Liability: \$1,000,000 per Occurrence

The following shall be included under the policy:

- Additional Insureds as required by the contract
- Thirty (30) days written notice of cancellation, non-renewal or material change to Monadnock Construction, Inc. and Aon

4. State Disability Benefits – Statutory as required by State

5. Contractor Construction Equipment Insurance

Any policies maintained by the Contractor on their owned and/or rented equipment and materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the Owner, Monadnock Construction, Inc. and all other indemnities named in the contract. This policy should be on an All Risk basis including the perils of flood, earthquake and collapse. Coverage should be on a replacement cost basis subject to an Agreed Amount Endorsement.

6. Professional Liability Insurance (Errors and Omissions)

In the event this agreement requires your firm to provide professional services, such as but not limited to, architectural, engineering, surveying, design, etc., a certificate of insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than \$5,000,000. Any material change in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to Monadnock Construction Inc within 30 days of such event.

7. Aviation Insurance

In the event any fixed or rotary aircraft are used in connection with this Agreement and/or in the execution of the work, a minimum of \$10,000,000 aviation liability insurance must be maintained with the following requirements: The Owner and Monadnock Construction, Inc. must be named as an additional insured and a waiver of hull damages must be provided in favor of the Owner and Monadnock Construction, Inc.

Initial	
Contractor	Subcontractor

Also, if any aircraft is to be used to perform lifts at the project site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment or material being lifted. All such lifts by me coordinated with Monadnock Construction, Inc, for approval prior to lift execution.

8. Environmental and Asbestos Abatement Coverages

If this agreement involves the removal of asbestos, the removal/replacement of underground tanks or use of toxic chemicals and substances, the contractor will be required to provide adequate coverages, not less than \$5,000,000 per claim basis, for such exposures subject requirements and approval of Monadnock Construction, Inc.

9. Watercraft Liability

In the event any operations of the Contractor involve work on or adjacent to any body of water, Watercraft Liability in limits of not less than \$1,000,000 should be provided covering the operations from or incidental to any owned, non-owned or hired watercraft.

10. Contractors Excluded from CCIP/Termination/Suspension

In the event Contractor participation in the CCIP is excluded, terminated, suspended, or the entire program is canceled, Contractor must provide, at their own cost, the insurance coverages outlined in Section B for on-site coverage.

Excluded Contractors must name Monadnock Construction, Inc., The Owner and other required entities as additional insured and produce Certificates of Insurance as evidence of such.

11. Contractors Responsibility

The aforementioned coverages in Section B as well as any other coverage that Contractor, may consider necessary are the Contractor's sole responsibility and any deficiency in coverage or policy limits of the Contractor, will be the sole responsibility of the Contractor.

12. Other Provisions

A. The insurance provisions set out above in way affect the liability of the Contractor's as may be stated elsewhere in the Contract.

B. All deductibles and self-insured retention amounts contained within the Contractor's coverages must be acceptable to Monadnock Construction, Inc. Any and all such deductibles in the described Insurance Policies shall be assumed by, for the account of and at the Contractor's sole risk as the case may be.

Initial	
Contractor	Subcontractor

C. Except as otherwise provided, it is expressly agreed and understood that the cost of premiums for insurance maintained by the Contractor shall be at their own expense and shall not be reimbursed by Monadnock Construction, Inc.

D. It is hereby understood that any insurance provided by Contractor shall be primary insurance and shall not be considered contributory insurance with any insurance policies of Monadnock Construction, Inc., Owner and any other Additional Insureds.

E. By so specifying Monadnock Construction, Inc. and/or Owner may require additional types of insurance.

F. Contractor shall not commence work under this contract until it has obtained all of the Insurance referred to herein and such insurance has been approved by Monadnock Construction, Inc. Nor shall the Contractor allow any subcontractor to commence work on this contract until the insurance required herein has been so obtained and approved.

G. Contractor further agrees to deliver to Monadnock Construction, Inc. before commencing any work hereunder a certificate of insurance, in a form satisfactory to Monadnock Construction, Inc., showing the name of the Insurance company, the date of expiration of the policies, the various endorsements and coverages required herein, the additional insureds required herein, and the limits of liability thereunder, and which endorsement shall recite that thirty (30) days prior written notice will be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight courier service to Monadnock Construction, Inc., the Owner and other additional insureds should such policies be canceled, changed during their term or non-renewed or prior to imposition of any material change in any policy term, condition or premium.

13. Conditions of Understanding

The amount and types of insurance coverages required herein should not be construed to be a limitation of the liability on the part of the Contractor. Any type of insurance or any increase of Limits of Liability not described above which the Contractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.

The Contractor shall file certificates of such insurance with Monadnock Construction, Inc. and Aon, prior to commencing work, which shall be subject to Monadnock Construction, Inc.'s approval for adequacy of protection, including the satisfactory character of any Insurer. If requested by Monadnock Construction, Inc., a certified copy of the actual policy(ies) with appropriate endorsement(s) and other documents shall be provided. In addition, the Contractor shall file renewals of such certificates no later than 10 days prior to the expiration of any such policy while work continues on the project.

In the event of failure of the Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, Monadnock Construction, Inc. shall have the right

Initial	
Contractor	Subcontractor

to take out and maintain same coverages for all parties on behalf of the Contractor at the cost of the Contractor who also agrees to furnish all necessary information thereof as well as pay the cost thereof to Monadnock Construction, Inc. immediately upon presentation of premium invoice.

14. Subcontractors you retain

Should a Contractor engage a subcontractor for work at this site, the same conditions will apply under this agreement to each lower-tier subcontractor. Copies of certificates of insurance for lower-tier subcontractors must be filed with Monadnock Construction, Inc. prior to that subcontractor entering the site. Failure to provide evidence of such insurance can result in the subcontractor being removed for the site until proper coverage is verified. Any cost resulting delay will be to the account of the subcontractor.

15. Waiver of Subrogation

Monadnock Construction, Inc. and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under this article or any other insurance actually carried by the Owner, Contractor or subcontractors, respectively. The Contractor shall require similar waivers by lower-tier subcontractors in accordance with this agreement. All insurance policies required hereunder shall permit and recognize such waiver of subrogation.

**Section C
Contractors CCIP Obligations**

The Contractor is required to cooperate with Monadnock Construction, Inc. and Aon with regard to administration and operation of the CCIP. The Contractor's responsibilities shall include but not be limited to:

- a. Provision of necessary contract, operations and insurance information
- b. Inclusion of these CCIP provisions in all subcontracts.
- c. Notification to Monadnock Construction, Inc. and Aon of all lower-tier subcontracts awarded
- d. Maintenance of monthly payroll records and other records as necessary for premium computation.
- e. Providing such payroll reports to the administrator (Refer to the Field Procedures Manual herewith attached to and made part of the contract.)
- f. Compliance with applicable loss control (safety) and claims reporting procedures
- g. Maintenance of the OSHA 300 log and copy of the same to be provided upon request.
- h. To the fullest extent permitted by law, the Subcontractor and their subcontractors shall and will indemnify and hold harmless the Contractor, the Owner and other additional insured from and against any and all claims damages loss, cost, expense and liability by reason of injury to or death of persons, including but not limited to the Subcontractor's own employees, and damage to or destruction of property whatsoever,

Initial	
Contractor	Subcontractor

caused by any act, occurrence, omission, or neglect of the Subcontractor, its officers, agents, servants, employees, vendors, subcontractors, upon, or about the jobsite at the Subcontractor's invitation or with its express or implied consent. The indemnity includes, but is not limited to any such act, occurrence omission or neglect, whether or not the Subcontractor's liability is based on active or passive negligence; and whether or not such act, occurrence, omission, or neglect is otherwise or similarly of an indirect or remote nature. Subcontractor's liability hereunder shall not be limited by the amount of insurance referred to herein.

Any and all subcontractors employed on the project by the Contractor are subject to all the terms and requirements contained herein.

Initial	
Contractor	Subcontractor

Rider 3

Monadnock Construction, Inc.

**CONTRACTOR CONTROLLED INSURANCE PROGRAM
PROCEDURE MANUAL**

I, _____, _____, of _____,
(Name) (Title) (Contractor)

hereby acknowledge receipt of the Monadnock Construction, Inc. Contractor Controlled Insurance Program Procedure Manual which is hereby made part of the attached contract

Signature and Title

Initial	
Contractor	Subcontractor

*Monadnock Construction, Inc.
Safety Procedures Manual*

MONADNOCK CONSTRUCTION, INC.

PROJECT SAFETY MANUAL

September 2004 version

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Safety Procedures Manual

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Monadnock Construction, Inc.
Safety Procedures Manual

1. INTRODUCTION

For the purposes of this Safety Procedures Manual, Monadnock Construction, Inc. and any affiliated, associated or subsidiary companies or corporations existing or hereafter constituted, will be referred to as "Monadnock" throughout. The Controlling Contractor for this project is Monadnock.

A. Management Commitment

MONADNOCK is committed to providing a jobsite that is free of all recognizable hazards. Safety and health issues will be addressed on site by continuous evaluation of Subcontractor work methods, equipment and work areas.

The information in this manual constitutes written policies and descriptions explaining systematic methods/procedures and assigning responsibilities for reducing the risk of personal injury, death or property damage. While MONADNOCK cannot anticipate every jobsite hazard, this manual is expected to guide the conduct of all employees in order to promote uninterrupted production and employment, and to protect life, health, and property.

The provisions of this safety program are well within requirements set forth by local, state and federal regulations, as well as standard industrial practices. The elements of the program are intended to increase the level of employees' awareness concerning potential workplace hazards and encourage safe work practices. These elements will be implemented uniformly and no safety violations will be tolerated. Compliance with the provisions of this manual does not relieve the Subcontractor of their contractual or other regulatory obligations.

This program will be updated periodically to ensure compliance with all applicable regulations and continuous protection of all personnel on site.

B. Subcontractor Employee Involvement

All Subcontractor employees are expected to perform their duties safely and comply with all applicable laws and regulations (local, state and federal).

Employees are encouraged to freely discuss their safety concerns with their immediate supervisors or the MONADNOCK Safety Representative.

All employees are charged with personal responsibility for safe behavior. Unsafe acts will not be tolerated.

***Monadnock Construction, Inc.
Safety Procedures Manual***

C. Training

Safety training is an integral part of this safety program. All Subcontractors are expected to educate their employees on the basic elements of this manual as well as other applicable regulatory requirement.

D. Injury Management/Early Return-to-Work

The Subcontractors are expected to return any injured employee to a productive environment as soon as possible after an injury. The Subcontractors must evaluate each lost-time injury and review the restrictions placed on each injured employee by his/her medical provider. If modified work can be found within the assigned restrictions on site, Subcontractors must provide employment within those restrictions. The Claims Representatives will work closely with each injured employee's treating physician and rehabilitation specialist, which in return will enable a program of this nature to be successful.

Monadnock Construction, Inc.
Safety Procedures Manual

2. SITE SAFETY MANAGEMENT

Project safety is a primary responsibility of all management and supervisors and all employees on this site. Each Subcontractor represented has overall responsibility for safety for their employees.

A. Functions and Responsibilities

The MONADNOCK Safety Representative is responsible for the following functional operations of the project safety programs:

1. Develop applicable safety standards for the project in accordance with MONADNOCK policies, procedures, and other applicable government regulations.
2. Participate in work-site layouts to assure adequate work areas, traffic control, parking areas, lighting levels, receiving areas, etc. Assure that location of offices, shops, maintenance areas, medical, and sanitation facilities reflect safety considerations.
3. Maintain liaison with appropriate client personnel, insurers, federal and state inspectors and others in matters of safety.

The Controlling Contractor has the overall responsibility for:

1. Implementing applicable safety standards for the project in accordance project policies and procedures, and any other applicable government regulations.
2. Ensuring that all new hires receive appropriate training and orientation before working on the project.
3. Reviewing work schedules as they are planned to be aware of the number of Subcontractors and craft workers working in the various areas; anticipate hazards and implement supporting safety activities.
4. Maintaining surveillance of job-site working conditions and safety practices and brings findings to the attention of the Monadnock safety representative.
5. Conducting Written Hazard Risk Assessment(s) with Subcontractors subject to high hazard processes including but not limited to excavations, explosives, steel erection, roofing, framing, scaffold erection, demolition, brick laying, and pre-cast or cast in place concrete
6. Performing incident investigations.

Monadnock Construction, Inc.
Safety Procedures Manual

B. Practices and Procedures

The Controlling Contractor safety representative monitors orientation for all contractor personnel.

The MONADNOCK representative may periodically audit Subcontractor files to review compliance with Project Safety Manual requirements.

Each Subcontractor is expected to conduct Tool Box/safety meetings at a minimum of once per week. More frequent meetings are recommended. Copies of topics discussed must be kept on file for review upon request.

C. Safety Equipment

1. Subcontractor employees are expected to provide their own safety equipment prior to arriving on site.
2. Approved safety equipment as required by the Federal and State Safety and Health Regulations must be available at all times, and strict enforcement of its proper use is exercised by project supervision.

D. Safety Hazards

1. The Subcontractor Safety Coordinator shall conduct written safety inspections of work areas and evaluate conditions as they relate to safe work practices.
2. In any area that the representative identifies as dangerous to personnel or property, work shall be stopped to correct hazards immediately.

E. Safety Inspections & Reports

1. Each Subcontractor is required to conduct frequent, at the minimum, daily inspections of their work areas in order to ensure that their employees are working in a safe manner.
2. The MONADNOCK Safety Representative will also perform periodic safety inspections of the site. Affected Subcontractor(s) shall promptly correct any infractions or poor safety practices uncovered by these inspections.

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3. SAFETY MANUAL MANAGEMENT PROCESS

This Safety Procedures Manual management process is designed to ensure effective review of existing procedures and implementation of new or revised procedures so that compliance and prevention requirements are maintained on site.

A. Responsibilities

Manual Holders shall ensure:

1. Their manual is up to date.
2. Signed acknowledgement forms shall be forwarded to the Monadnock Safety Representative.

The MONADNOCK Safety Representative shall ensure that:

1. All procedures meet the regulatory and MONADNOCK performance requirements.
2. All new/revised procedures and associated implementation plans are reviewed and approved by the site Management before being issued to Manual Holders
3. All completed implementation plans and updated versions are maintained for the most recent iteration of each procedure.
4. This management system and all procedures are reviewed as often as necessary, but at least annually from the latest revision date.
5. All revision suggestions are reviewed and the originator is given feedback, whether or not the suggestion is adopted.
6. A master copy of this manual is maintained at all times.

Subcontractor shall ensure:

1. The coordination of all proposed procedures and implementation plans within their assigned work areas.
2. All implementation requirements are fulfilled and documented.
3. Availability of the Monadnock Safety Procedures Manual to their employees.
4. All affected employees are trained on new/revised policies, practices and procedures.
5. Tracking of the implementation of each procedure or policy.

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6. Measurement and Payment – Safety and health equipment operations, training, dedicated personnel and requirements of Insurance and Project Safety Manual, will not be measured or paid separately, but are considered incidental to normal construction requirements.

B. Manual Update Process

1. The MONADNOCK Safety Representative shall maintain the master copy of the safety manual.
2. Manual Holders, including Controlling Contractors and Subcontractor employees, may make suggestions for new or revised procedures by forwarding the suggestion to their supervisor or the MONADNOCK Safety Representative.
3. The originator of each suggested revision shall be given written feedback on the actions planned or taken for each suggestion.
4. Each new or revised procedure shall have an implementation plan attached that includes all steps required for effective implementation.

The plan shall contain:

- a. The name and revision date of the procedure/policy to be implemented.
- b. Each action required for effective implementation (including all affected procedures and policies).
- c. Certification that the procedure or policy has been implemented and the date signed.

5. The MONADNOCK Safety Representative shall develop all new/revised procedures and implementation plans, and forward them to site management for draft review.
6. Comments shall be reviewed by the MONADNOCK Safety Representative and incorporated as appropriate. Any conflicts shall be resolved by Monadnock.
7. Upon receipt of new or revised procedures, manual holders shall update their manuals.
8. In the event that an immediate procedural change is warranted, an interim change memo may be issued to all manual holders by the Monadnock safety representative, which may be used in lieu of formal revision.

C. Manual Distribution

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1. The Controlling Contractor and each Subcontractor on the project are entitled to a copy of this manual
2. Other manual holders shall be as determined by Monadnock.

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4. Visitors

All visitors shall be required to report to the MONADNOCK project field office upon entering the project site. Access to the site shall be denied to any individual who does not have justifiable business on the job site.

Requests for tours of the project site shall be carefully screened and limited in frequency and numbers of people. Tours of the site shall be approved by the MONADNOCK Project Manager and/or Superintendent and are preferred to be conducted during non-working hours.

MONADNOCK shall establish the time and travel route for any tour. Areas, which may present hazards to the tour group, shall be prohibited. The tour's travel route shall be cleared of any tripping hazards, cleaned, and properly protected to avoid potential personal injury. A designated member of the MONADNOCK management team shall guide the approved tours.

All project site visitors who are permitted access to the site but are not on official on-site business shall sign a release before being authorized to proceed beyond the project office. The release is found in section 40 of this document.

All visitors shall wear long pants, shirts with sleeves over the shoulder (4 inches in length), hard hats, safety glasses, and hard-soled work boots when on site.

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5. NON-COMPLIANCE TO SAFETY POLICIES

Monadnock Construction, Inc. is committed to maintaining a safe and accident-free workplace. Monadnock's commitment is not enough, however. Obtaining this goal requires the same commitment by Monadnock's Subcontractors and their employees. To promote this goal, Monadnock maintains a Subcontractor Safety Disciplinary Program.

A. SUBCONTRACTOR SAFETY DISCIPLINARY PROGRAM (SSDP)

The Subcontractor Safety Disciplinary Program (SSDP) involves Monadnock and all Monadnock Subcontractors and is in effect on all jobs. **The SSDP program operates as follows:** This SSDP is included as part of Monadnock's subcontract. At the pre-job meeting an explanation of the program will be presented and time will be made available to answer any questions. Prior to the start of any work, Monadnock's field Superintendent will review the requirements of the SSDP with the Subcontractor's Foreman. The SSDP is a disciplinary program structured to ensure all Subcontractors on site understand and carry out their job site safety responsibilities.

All Monadnock job sites will be inspected on a regular basis by Monadnock and/or GBC Safety Services personnel. Any safety violations will be presented in writing to the Subcontractor Foreman and sent by fax to the Subcontractor's office. The Subcontractor can be cited at any time by Monadnock's Field Superintendent, Safety Inspector, Project Manager, or Executives.

In cases of serious, high hazard violations the Subcontractor will be instructed to stop the work involved immediately. For low hazard violations the Subcontractor will be given the opportunity to correct the violation in a reasonable amount of time, as determined by Monadnock personnel.

Note: At times, Monadnock's Subcontractors may subcontract a portion of their work. Monadnock's Subcontractor will be responsible for informing their subcontractors of the SSDP and insuring that they comply with all obligations. Any warnings, violations, or fines incurred by the Subcontractor's subcontractor will be written to Monadnock's Subcontractor and considered a failure on their part to comply with the SSDP.

For the purposes of this program, a low hazard violation will be defined as one that would be considered an "Other-Than-Serious" violation by OSHA. A high hazard violation will be one that is considered a "Serious", "Willful" or "Criminal/Willful" violation by OSHA. See attached excerpts from the OSHA inspector's guide for definitions of each of these classifications.

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B. WARNING/REMOVAL PROCEDURE

Each job site will be considered as a separate entity with its own Subcontractor Safety Disciplinary Program. All safety violations will be subject to a five step penalty process. These steps shall be as follows:

1. **Warning.** The Subcontractor and the Subcontractor's Foreman will be given a written warning of any low hazard safety violation. Action should be taken by the Subcontractor to remove the violation as soon as possible. It will be up to Monadnock's Superintendent to determine how much time will be allowed for correction. (Note: No Warnings will be given for high hazard safety violations. High hazard violations will result in an automatic First Violation - see Step 2 below).
2. **First Violation** If the Subcontractor and/or his personnel fail, in a timely manner, to correct a low hazard safety violation that has resulted in a warning (Step 1 above), the Subcontractor will receive a First Violation. Fines for each First Violation will be \$100. Any high hazard violation will result in an automatic First Violation - no Warning will be given - and the Subcontractor will be fined \$200 for each one received.
3. **Second Violation.** If the Subcontractor and/or his personnel are cited for a Second Violation for the same low hazard safety violation, the Subcontractor will be fined \$200. Fines for high hazard, Second Violations will be \$400. If it is the same worker that has been cited each time, the worker may be removed from the job.
4. **Third Violation.** If the Subcontractor and/or his personnel are cited for a Third Violation for either a low or high hazard violation, the Subcontractor will receive written notice that they are excluded for one year from performing any other work for Monadnock Construction. If it is the same worker who has been cited each time, he/she must now be removed from the job. (Note: A Third Violation will also serve as written notice to commence and continue correction of such default with diligence and promptness, as per Article 7.2 of the subcontract.)
5. **Fourth Violation.** Any Subcontractor who receives a Fourth Violation will be removed from the job. (Note: A Fourth Violation will serve as additional written notice to the Subcontractor, and three days after receipt by the Subcontractor, the subcontract shall be terminated, as per Article 7.2 of the subcontract.)

In addition to any fines received as a result of any violation, the Subcontractor shall be responsible for the proper replacement of any protection removed, disassembled, or destroyed by his/her workers. If the Subcontractor restores the protection, it shall be restored to proper condition, with the proper materials. If the Subcontractor does not restore the protection to the proper condition, he/she will be responsible for the cost of all material, labor and equipment required to restore the protection to proper condition.

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At the end of the project, all fines collected during the course of the job will be donated to a charity or charities as determined by Monadnock Construction from a list of possible charities agreed to between Monadnock and the Subcontractor. Fines will be paid within 30 days of their occurrence. In the event fines are not paid in a timely fashion, the fine will be back charged against the Subcontractor by Monadnock Construction, Inc., who will in turn credit the charity account with the funds.

A sample of possible safety violations are listed below. These are not all-inclusive and the Subcontractor shall understand that they can be cited for other safety violations not listed here:

1. An employee's failure to wear a hard hat in all construction areas.
2. An employee's failure to wear safety glasses or other appropriate eye and face protection when machines or operations present potential eye or face injury from physical, chemical, or radiation agents.
3. Removal by Subcontractor of cables, barricades, railings or other safety related items in order to perform their work, and failure to properly replace them each time they leave the area and when their work is completed.
4. For each floor opening cover removed and left unattended or not replaced at the end of that operation. A warning will also be issued against any Subcontractor creating a floor hole and failing to protect it.
5. For each incident where an employee is using a 120 volt, single-phase, 15- or 20-amp power tool on temporary power without Ground Fault Circuit Interrupter protection. An exception exists where an adequate assured equipment grounding conductor program is in place.
6. For each incident where a temporary or permanent electrical cabinet operating at greater than 50 volts is unprotected, exposing site personnel to contact with live parts. Note: A cardboard cover will not be considered adequate protection for a live panel box.
7. For each excavation which is not sloped, benched, or shored in conformance with OSHA standards, OSHA regulation 1926, Subpart P.
8. For each employee working at elevations greater than 6 feet without proper fall protection. (Excluding structural steel erection and work on ladders and scaffolds.)
9. For failure to construct, use, or modify any scaffold system in accordance with OSHA regulation 1926.451.
10. For failure to use and install a ladder in accordance with OSHA regulation 1926.1053.
11. For failure to work in accordance with the fall protection requirements outlined in OSHA 1926 Subpart R for structural steel erection activities.
12. For compressed gas cylinders not stored in accordance with OSHA regulation 1926.350.

These are only some specific instances that are subject to the five step penalty process. All Subcontractors must continue to abide by all federal, state, and local laws that apply to this project regardless of their inclusion in this program.

C. Excerpts of Violation Types From OSHA Inspector's Guide

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A. Other-Than-Serious Violations.

This type of violation shall be cited in situations where the most serious injury or illness that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate relationship to their safety and health.

B. Serious Violations.

- (1) *Section 17(k) of the Act provides "... a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."*
- (2) *The CSHO shall consider four elements to determine if a violation is serious.*
 - (a) *Step 1. The types of accident or health hazard exposure which the violated standard or the general duty clause is designed to prevent.*
 - (b) *Step 2. The most serious injury or illness which could reasonably be expected to result from the type of accident or health hazard exposure identified in Step 1.*
 - (c) *Step 3. Whether the results of the injury or illness identified in Step 2 could include death or serious physical harm. Serious physical harm is defined as:*
 1. *Impairment of the body in which part of the body is made functionally useless or is substantially reduced in efficiency on or off the job. Such impairment may be permanent or temporary, chronic or acute. Injuries involving such impairment would usually require treatment by a medical doctor.*
 2. *Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body.*
 - (d) *Step 4. Whether the employer knew, or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition.*
 1. *In this regard, the supervisor represents the employer and a supervisor's knowledge of the hazardous condition amounts to employer knowledge.*
 2. *In cases where the employer may contend that the supervisor's own conduct constitutes an isolated event of employee misconduct, the CSHO shall attempt to determine the extent to which the supervisor was trained and supervised so as to prevent such conduct, and how the employer enforces the rule.*
 3. *If, after reasonable attempts to do so, it cannot be determined that the employer has actual knowledge of the hazardous condition, the knowledge requirement is met if the CSHO is satisfied that the employer could have known through the exercise of reasonable diligence. As a general rule, if the CSHO was able to discover a hazardous condition, and the condition was not transitory in nature, it can be presumed that the employer could have discovered the same condition through the exercise of reasonable diligence.*

D. Willful Violations.

The following definitions and procedures apply whenever the CSHO suspects that a willful violation may exist:

- (1) *A willful violation exists under the Act where the evidence shows either an intentional violation of the Act or plain indifference to its requirements.*
 - (a) *The employer committed an intentional and knowing violation if:*
 1. *The employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements, and did not abate the hazard.*
 2. *An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement, and did not abate the hazard.*

E. Criminal/Willful Violations.

Section 17(e) of the Act provides that: "Any employer who willfully violates any standard, rule or order promulgated pursuant to Section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both."

NOTE: Individuals knowingly taking actions that are imminently dangerous to life or health of themselves, other workers, or the public at large will be requested to immediately stop the action and be removed from the site.

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1. IMMEDIATE TERMINATION - Examples of violations that will result in immediate termination are as follows:

- Removing another person's "lockout" lock and/or tag without permission
- Possessing or using alcohol or unauthorized drugs
- Driving company or client provided vehicles without valid state driver's license
- Improper dumping of hazardous chemicals onto ground or in drainage ditches.
- Any form of sabotage of Company/Client or another employee's property
- Horseplay
- Fighting
- Possession of firearms
- The above examples may be supplemented by project supervision as necessary.

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6. SITE SAFETY RESPONSIBILITIES

The intention of the Safety Procedures Manual is to develop a sound program to minimize the potential for injury to workers and the loss of property. The requirements of this manual are not intended to supersede OSHA standards or other state and local laws. The Safety Procedures Manual is intended to follow the standards set by OSHA and presents them a summarized format.

With the exception of fall protection, which is mandated at 6 feet on the MONADNOCK projects, the requirements set forth in this manual follow OSHA standards.

All Subcontractors working on MONADNOCK property shall meet or exceed the requirements of the MONADNOCK Project Safety Manual and shall designate a person responsible for safety, whether as a full-time position, or in addition to other duties.

A. GENERAL

- A. Authorization to Start Work: Subcontractors shall not start work until all necessary insurance coverage paperwork has been submitted and approved by Monadnock. All employees must receive a safety orientation prior to starting work.
- B. Job Hazard Analysis: Prior to the start of work activities, each trade subcontractor shall submit to the Monadnock's Safety Representative, in writing, a detailed Job Hazard Analysis of every task deemed to be a high-hazard work activity. Examples of high-hazard work activity includes but is not limited to excavations, explosives, steel erection, roofing, framing, scaffold erection, demolition, brick/block laying, and pre-cast or cast in place concrete. This analysis shall be ongoing and shall be submitted for new tasks prior to the start of work activity.
- C. Site Safety Representative: The Controlling Contractor will provide a site safety contact with overall responsibility for safety on the project.
- D. Subcontractor Safety Coordinator: Each Subcontractor shall designate an on-site Site Safety Coordinator, who shall be responsible for supervising safety activities related to their work on the site, either in a full-time role or in addition to other duties. This individual may be the superintendent, lead foreman, or other party located full-time on the site.
- E. Subcontractor Safety Coordinators are recommended to attend or to provide proof of completion of a certified OSHA 30 Hour Construction Training Course, or approved equivalent.
- F. Subcontractor Safety Coordinators are encouraged to be trained for First Aid and be CPR certified.

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- G. HAZCOM Library: Each Subcontractor shall submit Hazard Communication Plans and Material Safety Data Sheets to the Controlling Contractor at contract signing, who shall maintain a library of Hazard Communications for all employees at the site.
- H. Subcontractor's Equipment: All equipment (owned, leased or rented) brought onto Monadnock's property by Subcontractors must be in safe operating condition. Monadnock's personnel shall have the right but not an obligation at any time to inspect Subcontractors' equipment. Such inspections or failure to inspect shall not relieve Subcontractors of their responsibilities for the safe condition of their equipment.
- I. Emergency: Subcontractors shall instruct employees to report emergencies to their immediate supervisors and to the Controlling Contractor, or, if not available, by calling 911. Subcontractor employees are not to go to the scene of the emergency. Subcontractor employees are to report to the designated assembly area, do manpower accounting, and remain on standby.
- J. Perform investigations to obtain root cause analysis of injury, property damage, or near hit incidents.

B. Work Rules

- 1. Smoking: Smoking is prohibited, except at locations approved by Monadnock.
- 2. Hot Work: "Hot Work" is defined as any work requiring the use of burning or welding equipment, brazing equipment, explosives, open fires, portable grinders, explosion-activated tools, or any other flame or spark producing equipment. Subcontractors shall not use open fires or spark-producing equipment or do any "Hot Work" when there are combustibles in the area without the knowledge and consent of the Controlling Contractor.
- 3. Connecting into existing Pipelines, Sewers, or Equipment: Subcontractor shall not open or tie its work into MONADNOCK existing pipelines or equipment without a written permit from Monadnock. After a tie-in has been made to the MONADNOCK existing lines or equipment, the whole piping or equipment system involved shall be considered the same as MONADNOCK existing lines and equipment; a written approval must be obtained from MONADNOCK before additional work can be done on any of these lines or equipment, unless a blind, approved by Monadnock, has been installed separating the lines and equipment being worked on from the remainder of the system. This permit to open or blind does not constitute a permit to do "Hot Work" on the lines or equipment. Permission must be obtained from MONADNOCK prior to the use of site utilities; such as, but not limited to, water, steam, and air systems, and fire hydrants. Connections to fire hydrants must have MONADNOCK approval before connections are made.
- 4. Work on, Adjacent to, or Connecting into Existing Electrical Power Circuits and Work on Electrically Operated Equipment: Under no circumstances shall Subcontractor work on or connect into MONADNOCK electrical system or work on MONADNOCK electrically operated equipment without securing prior written permission from Monadnock.

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- 4. Subcontractor must have in place approved "Electrical Tag/Lockout Procedure". The procedure shall be administered and supervised by the Controlling Contractor.
- 5. Entering Pits, Excavations, and Tanks: Subcontractor shall not enter any closed container, as defined below, without a confined space entry permit. The Controlling Contractor shall be provided a copy of the permit issued. The spaces referred to above include excavations, open top containers and sewers where the head of a person working therein is below the top of the vessel, excavation or sewer.
- 6. Working in the Vicinity of Electric Lines: When it is necessary for a Subcontractor to operate cranes or derricks, or perform other work within 20 feet of electric lines (vertically or horizontally), Subcontractor shall consult the Controlling Contractor to determine whether the electric lines can be de-energized.
- 7. Excavations: All excavations made by the Subcontractor shall meet OSHA Standards. No excavation work shall be performed without a permit listing an active Dig-Safe number where applicable.
- 8. Moving Suspended Loads: Subcontractor shall not move loads suspended from mobile equipment without load being secured to prevent swinging. All chains, cables, rope, etc., suspended from mobile equipment shall be properly fastened. Tag lines shall be used in all loads handled by lifting equipment.
- 9. Damage to MONADNOCK Property: If Subcontractor damages any of Monadnock's property, or property of any other Subcontractor, the damage shall immediately be reported to the Controlling Contractor and an accident report is to be completed.
- 10. Warning and Caution Signs: Subcontractor shall obey all safety warning signs posted by MONADNOCK and shall require and monitor that safety equipment required by signs is used.
- 11. Fire Extinguishers: Welding machines, burning rigs and tar pots shall have either a 10BC rated CO₂ or a 20 BC rated dry chemical fire extinguisher in proper working condition located adjacent to the equipment. An extinguisher supplied by the Subcontractor shall be located at each point where "Hot Work" is being performed.
- 12. Compressed Gas Cylinders: Transportation, Storage and Use: Compressed gas cylinders, empty or full, shall be adequately secured in an upright, vertical position when in transportation, storage, or use. Do not store cylinders under pipe or power lines. Protective caps must be kept in place. Use holders, chains, or keepers to prevent overturning. Secure cylinders in a vertical position with a suitable keeper while connected to equipment. Do not allow oxygen to come in contact with hydrocarbon in any form. Avoid any rough-type handling. Subcontractor shall not use oxygen or acetylene for testing purposes. Subcontractor shall not take any cylinders inside a vessel. Subcontractor must label its gas cylinders with the company name so that they can be identified.

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13. Guarding: Subcontractor shall guard or place appropriate barricades around temporary openings in floors, handrails, etc., to prevent accidents. Subcontractor shall replace handrails and a guardrail immediately after need for opening has ended. Guards on moving machinery shall be in place or other protection provided before such machinery is operated. Subcontractor shall guard or protect any area into which materials or tools are to be stored.
14. Electrical Tools and Equipment: Subcontractor shall ground portable electrical tools, metal buildings and equipment. Only Explosion-proof, approved portable lights (Underwriters Laboratory or Bureau of Mines Approved) can be used in explosive atmospheres. Inspect all lighting equipment before use, especially mercury vapor lights, to insure covers are not broken or missing. Only 12-volt electrical systems or less can be used during entry situations where a explosive atmosphere is present. Subcontractor must conform to established Control of Hazardous Energy requirements.
15. Welding and Burning: Subcontractor shall not leave welding and/or burning torches unattended at any time on Monadnock's premises. Whenever there are combustible materials present, sparks from welding must be contained to welding area and there must be a standby person, properly trained and equipped. Subcontractor shall not weld from a personnel cage without an insulated link between the bail and hook. Subcontractor must use flash back prevention in the gas-supplied torches on both oxygen and fuel lines. Subcontractor shall not weld on oil or gas lines or equipment in service unless there is an internal cooling agent to remove heat, such as flowing liquid or gas, and/or unless there is sufficient metal, as approved by a qualified party, to prevent a burn-through.
16. Compressed Air: Contractor shall not use compressed air for cleaning purposes unless the airflow is regulated to 30 psi or less. Compressed air may not be used on personnel for cleaning purposes.
17. Refueling Vehicles and Equipment: Whenever possible, gasoline and fuel shall be dispensed through a pump and hose from an approved fueling tank. If not possible, approved Underwriter or Factor Mutual safety cans with flexible spout may be used. Transfer of fuel in non-approved cans, open containers and glass containers is prohibited. Vehicles and equipment engines must be turned off during refueling. Do not transport gas cans in truck beds with bed liners.
18. Clothing and Grooming Rules: Long pants or coveralls are required. A well-constructed boot/shoe that provides ankle protection, with a substantial flexible sole, must be worn. Exposure to hazard dictates whether a protective toe guard will be required. Sandals, tennis shoes, or any other street type shoes will not be permitted. Wear clothing that covers and protects the body when working or visiting in areas where the probability of exposure to hot liquids, flash fires, or skin irritants exists. This includes some type of arm covering. Loose clothing, such as loose sleeves, neckties, or gloves shall not be worn where there is a probability of it getting caught in moving machinery. Hard hats meeting specifications contained in the most current edition of ANSI Z89.1 and/or Z89.2 are required for all personnel requiring access to the job site. "Bump caps" are prohibited. Facial hair is not allowed for employees whose work requires the use of respiratory protection devices. Ear plugs and/or earmuffs shall be worn while working in areas posted with noise warning signs,

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- or while working with or near tools or equipment which generate sufficient noise to make normal conversation difficult. All employees must meet the requirements of the "Material Safety Data Sheets" for use and wearing of additional protective equipment when working on or with chemicals.

19. Reporting Requirements: Subcontractor must report to Monadnock :

- a. All safety-related actions by local, state, or federal government. These include but are not limited to OSHA, EPA, etc. (Controlling Contractor and Subcontractor shall advise MONADNOCK of any planned inspections by any of these agencies. Subcontractor shall provide copy of all correspondence with any government agencies to Monadnock).
- b. Any safety-related complaints to government agencies by employees, union or third parties.
- c. Any injury or near-miss injury, or any equipment damage or near miss equipment damage in the workplace. Reports must be submitted within 24 hours.

20. OSHA Records: Subcontractor must have available OSHA 300 Forms at the site or have this information readily available for inspection by Monadnock.

21. Safety Rule Violations: Safety rule violations by Subcontractor employees noted by the Controlling Contractor or MONADNOCK shall be addressed immediately. Unsafe operations that represent an immediate safety hazard or endanger the safety of site employees shall be stopped immediately and brought to the attention of Monadnock. Employees violating site safety requirements will be subject to the Disciplinary Procedure outlined in the Project Safety Manual.

22. Safety Inspections: Safety inspections shall be conducted by the Controlling Contractor's Site Safety Contact and by Sub-contractor Safety Coordinators to ensure all workers are performing assigned activities in a safe manner. Any problems found shall be brought to the attention of Monadnock.

23. Housekeeping: At all times the job site shall be kept clean and free from debris, trash, and rubbish. Subcontractor shall store all materials in a neat and orderly fashion. Dismantled or surplus materials, trash, and debris (including earth, clay, lumber, concrete, metal, insulation, paper, etc.) that falls from Subcontractor's vehicles shall be promptly cleaned up by Subcontractor

24. Breathing Air: All air used for breathing purposes must be bottled, compressed breathing air meeting the Grade D breathing air as described in the Compressed Gas Association Commodity Specification G-7.1966.

25. Ladders: Ladders that are defective in any way shall be taken out of service. The following requirements pertain to serviceable ladders:

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- a. Straight or extension ladders require non-skid safety feet.
- b. All ladders shall be secured at the top whenever they are in use.
- c. Employees working around energized lines shall use wooden ladders.
- d. Metal ladders are not allowed.

26. Scaffolds: Scaffolds must be constructed to meet OSHA Standards. All scaffolds must meet the following requirements: Ladders must be provided for safe access. All scaffold planking shall be free of knots and cracks (Class A Scaffold Lumber) and shall completely cover the work platform. Only planking that has been inspected is permissible for use as scaffold plank. Scaffolds over 4 feet in height, having a minimum horizontal direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform. If standard guardrails are not feasible, then personal fall arrest systems (harness/lanyard/anchor) shall be provided by the contractor and used for fall protection. An approved scaffold inspection system shall be maintained.

27. Safety Harness: A safety harness is required for anyone working in areas exposed to a potential fall of more than 6 feet. Lanyards shall be secured whenever handrails or a complete deck does not protect the employee. If the employee has nothing with which to secure him/her, a lifeline shall be provided. The lifeline shall be in compliance with the minimum requirements of OSHA regulations. Lifelines shall be checked periodically. Any lifeline, safety harness, or lanyard actually subjected to fall loading shall be removed from service.

28. Supervisory Responsibility: Set a Good Example –Contractor supervisory personnel shall at all time set a good example for employees in order to encourage compliance with these safety rules and regulations. Provide Adequate Instruction –Contractor Supervisory personnel shall provide adequate instruction in and require compliance with:

- i. Accident prevention aspects of each job;
- ii. Use or application of appropriate protective equipment and devices;
- iii. Use or application of tools and equipment

29. Cooperate with Monadnock's Designated Representative: Contractor personnel shall cooperate with Monadnock's designated representatives where the safety aspects of a job require coordination.

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30. Site Protection Regulations:

Parking Locations - MONADNOCK will designate parking locations for the site. All vehicles on MONADNOCK premises will be at the risk of the vehicle owner; MONADNOCK accepts no responsibility for damage to or theft of or from such vehicles.

Entrance Gate - MONADNOCK may designate a gate for the use of the contractors for the delivery of material and supplies. Personnel and vehicles shall use only the designated gate for entrance to and exit from the job site. Contractors will make arrangements so that vehicle drivers will know which gate to enter and the appropriate job site location.

Use of Subcontractors: Contractor shall give the names of sub-tier contractors in writing to MONADNOCK prior to starting work.

Gambling: All forms of gambling are prohibited on MONADNOCK property.

Ambulance Service: Subcontractors, when working on site, shall coordinate with the Controlling Contractor to make any necessary arrangements for ambulance service. See Section 4 of this manual.

Liquor, Drugs, Firearms: Any person possessing intoxicating liquors or drugs, or who is under the influence of such, will not be permitted to enter the site or loiter on the site premises. Firearms, alcoholic beverages, or narcotics will not be permitted on MONADNOCK property or on the job.

Visiting and Loitering: Visiting and loitering by Subcontractor's employees at or around entrance gates or other places on MONADNOCK property will not be permitted. Subcontractors must stay in assigned work areas.

30. Traffic Regulations:

- a. **Equipment Required on Motor Vehicles** - All motor vehicles on site must be in safe operating condition. When entering the site, all motor vehicles must display a valid state inspection sticker on the windshield.
- b. **Driver's License**: Motor vehicle drivers shall be qualified in accordance with driver's license regulations of any state in the US.
- c. **Warning Flags** - Red flags shall be used on any load that extends beyond the front, side, or rear of any vehicle.
- d. **Traffic Signs** - All traffic signs and signals, whether fixed or portable, shall be obeyed, and drivers must cooperate with representatives appointed to direct traffic.
- e. **Speed Limit** - All vehicles shall be operated within the site's posted speed limits.

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7. ILLEGAL SUBSTANCE USE AND ALCOHOL ABUSE PROGRAM

This document will outline and explain the policies and procedures of this project concerning the use of drugs and abuse of alcohol on this project.

A. Introduction

1. Drugs, alcohol, and any form of non-prescription medications (defined as a medication that can have a material effect on a person's ability to carry out their regular job duties) shall be prohibited, as well as reporting to work under their influence. Those involved in distributing or accepting any form of illegal drugs or alcohol on the job site will be terminated.
2. An employee on any type of prescription medication must notify his/her supervisor before starting work for the day.

B. Purpose

The policies and procedures set forth herein are adopted for the following purposes:

1. To protect employees from injury to themselves;
2. To protect fellow employees and third parties from injury and, generally, to ensure a safe working environment for all employees;
3. To protect property and equipment of MONADNOCK and others from damage;
4. To protect MONADNOCK from possible legal liability caused by improper acts of contractor employees/workers on this project; and
5. To prevent/prohibit employees from working under the influence of drugs or alcohol.

C. Policies

1. The term "illegal drugs" as used in the policy refers to drugs which are "controlled substances" under federal or state laws, the possession or use of which, without proper prescription therefore, constitutes a violation of law.
2. In furtherance of the above general policies, the following specific prohibitions shall be in effect and shall be enforced:
 - a. No one shall report to work on this project or perform any work for MONADNOCK while under the influence of illegal drugs or alcohol.
 - b. No one shall engage in any activity pertaining to the manufacture, distribution, sale, possession or use of illegal drugs. Nor shall anyone possess

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or consume alcohol while on the project premises, in any company/contractor vehicles, or while engaged in the performance of work for Monadnock.

- c. No one shall use MONADNOCK property or equipment, or one's position with project to facilitate any illegal activity pertaining to the manufacture, distribution, sale, possession or use of illegal drugs.

D. Sanctions For Violating This Policy

Violation of this policy by any employee/worker will furnish grounds for immediate removal from the project.

E. Prescription Medication

Any employee/worker, who is using prescribed medication, must report to their supervisor before starting work for the day. The Supervisor must determine, in consultation with the employee's physician or other medical consultants, if it is safe for the employee/worker to perform his or her regular duties while taking the medication in question. If not, the employee/worker will be directed to perform other duties (if available) or will be directed not to report to work, until it is determined that it is safe to do so.

F. Drug Testing

An employee who is involved in an accident in the course of job duties which involves use of vehicles, heavy equipment, power tools or other dangerous instruments or under working conditions which result in a lost time injury or substantial property damage (generally in-excess of \$1,000) may be tested for reasonable cause in cases which the designated Contractor safety representative concludes that:

the accident was caused by human error or could have been avoided by reasonably alert action; or the employee to be tested was an active participant in the accident circumstance; or substance use cannot be discounted as a contributing factor.

All time spent in the specimen collection process shall be on the clock at the applicable straight time or overtime rate until the employee is released back to the Project. Employees removed from duty for reasonable cause testing will remain off duty until test results are received. If the employee tests negatively for drugs or alcohol, the employee will receive full back pay for the time missed. If the employee tests positively, the employee will be barred from the Project effective the date and time of the specimen collection. Any employee so barred will be eligible for referral to the Project after a period of not less than 60 days. Before being rehired, any such employee must pass a drug test conducted by an approved laboratory at the employee's expense and must agree, as a condition of reemployment, to submit to drug or alcohol testing at Monadnock's request, for a period of six months.

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8. EMERGENCY MANAGEMENT

The Controlling Contractor will develop and issue a site-specific emergency management plan.

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9. DEMOLITION

A. Scope and Application

It is the intent of MONADNOCK to monitor and review the safety procedures during demolition processes to ensure the safety of all Subcontractors. The Demolition Subcontractor's Superintendent will be responsible for providing direction and guidance to all of its employees during the demolition operation. It is the sole responsibility of the Subcontractor or Sub-Subcontractor who conducts these processes to utilize and enforce the following procedures and meet all current federal, state, and/or local relevant to the operation(s). The Subcontractor shall be responsible for submitting a Job Safety Analysis/Job Hazard Analysis and work procedures plan at a minimum of seven (7) days prior to the start of demolition for each phase.

B. Procedures

1. Subcontractors will be required to wear durable gloves, eye protection, and long sleeved shirts in addition to their standard Personal Protective Equipment when performing selective demolition operations. The Subcontractors are solely responsible for this and any other required personal protective equipment
2. Prior to beginning demolition operations, an engineering survey will be made by a qualified person designated by the Subcontractor. This survey shall determine the condition of the framing, floors, and walls, and will also determine the possibility of an unplanned collapse of any part of a structure. Adjacent structures will be checked for structural integrity. Written evidence of the results of this survey is to be given to Monadnock. In addition, the Subcontractor shall supply the job safety analysis of the demolition operation.
3. Prior to beginning demolition operations, MONADNOCK will obtain a site survey identifying the locations of asbestos and lead-containing materials. Monadnock will verify the removal of all asbestos and/or lead contaminated areas and supply a signed verification document supplied by a registered, licensed abatement firm stating that the site is clear of all hazardous material.
4. All electric, gas, water, steam, sewer, and other service lines shall be shut off, capped, or otherwise controlled outside the building line before demolition work is started. Any utility company whose services are affected will be notified in advance by the Subcontractor.
5. If electric, gas, water, steam, sewer, or other utilities are necessary during demolition; their lines shall be temporarily relocated and protected.
6. Before demolition begins, the building will be checked to determine whether any hazardous chemicals, gases, explosives, flammable materials, or similarly dangerous substances have been used in pipes, tanks, or other equipment on the property. If

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found, they shall be eliminated before demolition is started. Any hazardous glass fragments shall be removed.

7. All floor and wall openings, which pose a fall exposure, shall be protected by guardrails and covers.
8. If debris is dropped through holes in the floor without the use of chutes, the area onto which the material is dropped will be completely enclosed with barricades not less than 42 inches high and not less than 6 feet back from the project openings. Signs shall be posted at each level, warning of the hazard of falling materials. Removal of the debris from the lower area shall not be permitted until debris handling from above has ended.
9. Floor openings not used as material drops will be covered with material that can withstand the weight of any potential load. The floor opening cover will be secured to prevent it from being incidentally moved.
10. Demolition of exterior wall construction and floor construction will begin at the top of the structure and proceed downward, except for the cutting of holes in floors or walls for chutes and material drops, preparation of storage space, and similar preparatory work. Each story of exterior wall and floor construction will be removed and dropped into the storage space prior to removing exterior walls and floor construction in the story below.
11. Entrances to multi-story structures being demolished shall be completely protected by sidewalk sheds, canopies, or both. Protection shall be provided from the face of the building for a minimum of eight (8) feet. Canopies shall be at least two (2) feet wider (one (1) foot each side) than the opening or entrance being protected, and will be capable of sustaining a load of 150 pounds per square foot.

C. Chutes

1. Debris chutes, or sections at an angle of more than 45 degrees from the horizontal will be entirely enclosed, except for openings equipped with closures at or about floor level where materials are inserted. The openings will not exceed 48 inches in height as measured along the wall of the chute. At all stories below the top floor, openings not being used will be kept closed or covered.
2. Each chute shall have a substantial gate at or near the discharge end. A Subcontractor designated Competent Person shall control the operation of the gate and the backing and loading of trucks.
3. When operations are not in progress, the area surrounding the discharge end of a chute shall be securely closed off.

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4. A guardrail will protect any chute opening into which debris is dumped. Any space between the chute and the openings in the floor through which the chute passes will be covered.
5. Where material is dumped from mechanical equipment or wheelbarrows, a securely attached toeboard or bumper not less than 4 inches thick and 6 inches in height will be provided at each chute opening.

D. Removal of Materials through Floor Openings

There is to be no removal of materials through floor openings unless approved by the MONADNOCK Superintendent.

E. Manual Removal of Floors

1. Openings cut in floors will extend the full span of the arch between supports. Before demolishing a floor arch, debris and other material will be removed from the arch and other adjacent floor area. Planks not less than 2 inches by 10 inches in cross section, full size undressed, will be used to stand on while breaking down floor arches between beams. The planks will be placed so that a safe support is provided for the workers if the arch between the beams collapses. The open space between planks shall not exceed 16 inches.
2. Safe walkways meeting Federal OSHA standards, not less than 18 inches wide, formed of planks, not less than 2 inches thick, if wood, and of equivalent strength, if metal, will be provided so that workers can reach any point without walking on exposed beams.
3. Stringers of ample strength will be installed to support the flooring planks and the ends of such stringers will be supported by floor beams or girders, and not by floor arches alone.
4. Planks will be laid together over solid bearings with the ends overlapping at least one (1) foot.
5. Demolition of floor arches will not be started until the arches and surrounding floor area for a distance of 20 feet have been cleared of debris and any other unnecessary materials.

F. Removal of Material with Equipment

Mechanical equipment will not be used on floors or working surfaces unless the floor or surface is strong enough to support the imposed load.

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G. Storage of Materials

No demolition materials are to be stored inside the building without the permission of the MONADNOCK Superintendent and meeting Federal OSHA standards.

H. Removal of Steel Construction

1. Steel construction shall be dismantled column length by column length and tier by tier. If cutting and burning is to be done on steel then the steel must be checked for lead based paint. If lead is found in the paint then the proper precautions must be taken to prevent worker exposure. A fire watch, per OSHA, must be maintained for a minimum of 30 minutes after all cutting and burning has been completed.
2. Structural members being dismembered are not to be overstressed.

I. Demolition using Mechanical Equipment

1. When demolition balls and clam buckets are used for demolition, no craft personnel will be allowed to enter an area where they can be adversely affected by this operation. Only those Subcontractors necessary for the performance of the operations will be permitted in this area at any other time.
2. The weight of the demolition ball shall not exceed 50 percent of the crane's rated load. This is based on the length of the boom and the maximum angle of operation at which the ball will be used; or it will not exceed 25 percent of the nominal breaking strength of the line by which it is suspended, whichever is less.
3. The ball will be attached to the load line with a swivel-type connection to prevent twisting of the load line, and attached so that the weight cannot become incidentally disconnected.
4. During demolition, continuing inspections by a Subcontractor assigned Competent Person shall be made as the work progresses so that hazards that could result from weakened or deteriorated floors, or walls, or loosened material are detected. No Subcontractor employee will be allowed to work where such hazards exist until these hazards are corrected by shoring, bracing, or other effective means.

J. Training

Subcontractors are responsible for training their employees in all applicable demolition operations and all applicable Federal, State, and Local laws, codes, and standards.

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10. FIRE PREVENTION/PROTECTION

Contractors shall ensure that their employees comply with all Fire Safety rules and regulations established on this project. Review the applicable OSHA standards under Subpart F - Fire Protection and Prevention; 1926.150, 151, 152, 153, 154, 155.

This section of the manual pertains to those fire prevention and protection regulations that all construction organizations, Subcontractors, vendors, and others shall observe while working on the project. Subcontractors must practice the highest level of fire prevention and protection at all times, but in no case less than required by the OSHA Standards and the specific guidelines that follow.

A. General Requirements

1. Subcontractors are responsible for the development of a fire protection program to be followed throughout all phases of the construction and demolition work, and shall provide for the fire fighting equipment as specified in this subpart. As fire hazards occur, there shall be no delay in providing the necessary equipment.
2. All fire fighting equipment must be clearly accessible and conspicuously located.
3. All fire fighting equipment must be periodically inspected and maintained in operating condition.
4. A temporary or permanent water supply shall be made available as soon as combustible materials accumulate.
5. Tanks and containers shall be conspicuously marked with the name of the product they contain and "FLAMMABLE - KEEP FIRE AWAY."

B. Fire Extinguishers

1. Travel distance to any fire extinguisher will not exceed 100 feet.
2. A fire extinguisher rated not less than 2A will be provided for each 3,000 square feet of building area.
3. One or more fire extinguishers rated not less than 2A shall be located on each floor of a multi-story building.
4. At least one fire extinguisher rated not less than 2A shall be located adjacent to each stairway in a multi-story building.
5. Extinguishers must be clearly accessible, conspicuously located and be periodically inspected and maintained in operating condition.

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6. Fire extinguishers rated not less than 10B will be provided no less than 50 feet from any area in which more than 5 gallons of flammable or combustible liquids or 5 pounds of a flammable gas are being used or stored.
7. Substitutions for 2A Fire Extinguishers - The following may be substituted for each required 2A extinguisher:
 - One water hose of not less than $\frac{1}{2}$ " diameter, of not more than 100 feet in length and with a discharge capacity of at least 5 gallons per minute. Hose must have sufficient length and stream range to reach all areas of coverage.

C. Ignition Hazards

1. Electrical wiring and components shall be installed in compliance with OSHA Subpart K, to prevent fire hazards.
2. Keep exhaust from engines away from combustible materials.
3. Smoking will be prohibited in the vicinity of operations that are likely fire hazards; post "No Smoking" signs.
4. Use only "approved for use in" lighting equipment in flammable or hazardous locations.

D. Temporary Buildings

1. Do not block any exits with a temporary building.
2. Temporary buildings, when located inside of another structure must be made of either noncombustible material or have a minimum one-hour flame resistance.
3. Keep 10 feet of access around sides of temporary building.

NOTE: This includes change shanties inside of a building.

E. Open Yard Storage

1. The entire storage site must be kept clean of combustible debris, also an access way of at least 15 feet width maintained.
2. Store materials in an orderly fashion, in no case higher than 20 feet, and not within 10 feet of any building or structure.
3. Tanks and dispensing units must be protected against collision damage.
4. A fire extinguisher of at least 2A rating must be provided no less than 25 feet and no more than 75 feet from any storage area.

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F. Indoor Storage (combustible materials)

1. Storage shall not obstruct exits.
2. Non-compatible materials must be separated by a one-hour fire rated barrier.
3. Keep materials piled neatly and with regard to the possibility of fire, maintain an open access way for fire fighting.
4. Maintain at least 36 inches clearance between materials and sprinkler heads. Materials must be kept at least 36 inches away from fire doors.

G. Flammable and Combustible Liquids

1. Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids. Only approved metal safety cans shall be used for the handling and use of flammable liquids. Flammable and combustible liquids shall not be stored in areas of exits, stairways, or other areas used for the safe passage of people.
2. No more than 25 gallons of flammable and combustible liquids shall be stored in a room outside of an approved storage locker. No more than 60 gallons can be stored in a single approved storage cabinet. Note: See specific OSHA standards 1926. 152 (b) for details concerning approved storage lock/cabinet for flammable and combustible liquids.

H. Flammable and Combustible Liquids Storage (outside)

1. Post danger/hazard signage (No Smoking or Ignition)
2. Individual containers of not more than 60 gallons each shall not exceed 1,100 gallons in any pile or group and the piles must be separated from each other by at least 5 feet. Keep containers at least 20 feet from any building.
3. Storage area must be graded or diked to divert spills away from buildings.
4. Individual portable tanks exceeding 1,100 gallons shall be separated from each other by at least 5 feet. Keep tanks at least 20 feet from any building. All tanks must have venting per NFPA codes.
5. All areas of outside storage must be maintained free of debris, excessive weeds, and other combustibles, and must have a 12-foot access way for fire personnel within 200 feet of storage area.
6. A fire extinguisher rated of not less than 20B shall be located not less than 25 feet and not more than 75 feet from the storage area.

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I. Dispensing Flammable Liquids

1. Flammable liquids must be dispensed through a closed system.
2. Transferring liquids from one container to another shall be done only if containers are bonded.
3. No smoking signs must be posted in area.
4. Use only approved safety cans for minor equipment refueling. Cans must be marked with contents such as gasoline, diesel, kerosene, etc.
5. Disposal of flammable and combustible liquids will be in accordance with governing EPA requirements.

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11. GASOLINE POWER

A. Scope and Application

Most construction sites have gasoline equipment and thus introduce the hazard of potential fire and dangerous fumes. All welding equipment, generators, equipment that must be used inside the confines of an enclosed building shall have alternative means of energy production, i.e. propane or electrical powered. All Subcontractors on this project shall abide by the following procedures and requirements.

B. Fire

OSHA and fire departments have regulations regarding quantity and methods of handling gasoline. The following rules will minimize the danger from fire:

1. Review OSHA and local fire department requirements and comply with these standards.
2. Storage of gasoline containers must comply with OSHA regulations, and fuel transfer operations must be conducted outside of the building.
3. When drums are used for storage, use drum pumps which are designed specifically for flammable liquids. Use safety bungs for the vent opening. These are equipped with perforated cylindrical screens which act as fire baffles. The use of a gravity feed or bottom draw drum is prohibited..
4. Use only approved metal safety cans for filling engine tanks. (automatic safety latch closer and with flash arrestors)(no plastic cans)
5. Shut down engine when refueling.
6. Have a 20 pound ABC dry chemical type extinguisher available wherever flammable liquids are handled.
7. No smoking near gasoline.
8. All drums shall be properly labeled as per OSHA 1926.59 Hazard Communication.

C. Fumes

Gas engines exhaust carbon dioxide and carbon monoxide. Dioxide is heavier than air; monoxide slightly lighter. A mixture of the gases usually is heavier than air although heat may cause it to rise. Both are without color, taste or smell. Light concentrations cause headache and nausea. Death is swift in heavy concentrations. A few minutes may be too long. Don't discount this hazard. If anyone exhibits symptoms, do not attempt rescue without proper personal protection equipment (See Confined Spaces)

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Do not run gas engines in pits, manholes or confined spaces without positive ventilation. Always pipe gas engine exhausts to outside air when engine is located in enclosed space. Start blower before engine. If engine stops, be sure space is well blown out before sending anyone in to restart. If in doubt, check for gas with CO Tester.

Danger spots are deep excavations, pits, manholes, hoist engineers' shanties, pipe or crawl spaces under basement floors, and where gas heaters are used.

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12. CONFINED SPACES

This procedure outlines the requirements for working in Confined Spaces. The purpose is to establish procedures and controls for employees who enter confined spaces that may contain hazardous atmospheres. No contractor's employee will be permitted to enter any confined space until the appropriate entry procedures are complete.

A. Responsibilities

The Controlling Contractor shall ensure compliance with this procedure and administer all necessary permitting requirements.

B. Identification of Confined Space Workers

1. Qualified Person: An employee who by virtue of training and/or experience is capable of authorizing Confined Space entry, determining atmospheric conditions, and validating an entry permit. Authorization is delegated by site management and must include the authority to cancel or terminate entry at his / her discretion if hazardous conditions arise or are suspected.
2. Confined Space Attendant (also referred to as "standby personnel"): An employee trained in basic rescue techniques, hazard recognition, communication methods, and control of Confined Space entrants.
3. Confined Space Worker/Entrant: An employee authorized to work in a Confined Space who has received appropriate training to perform his or her assigned duties under the entry permit program.
4. Rescue Team: A team of rescue personnel, either onsite or members of an outside organization, with the responsibility to respond to Confined Space emergencies and perform advanced rescue if and when required.

C. Confined Spaces

1. A confined space is one by which by design, construction, or configuration, has limited means of access and egress, has inadequate natural ventilation, contains or could produce dangerous air contaminants, and which is not designed for continuous occupancy.
2. Each Subcontractor is responsible for determining if the places they work will fall under the confined space requirements.

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D. Confined Space Types/Classes

1. Class "A" - Presents a situation which is immediately dangerous to life or health (IDLH) These include, but are not limited to, oxygen deficient, explosive or flammable atmospheres, and/or concentrations of toxic substances.
2. Class "B" - Has the potential for causing injury and/or illness if preventative measures are not used, but is not considered immediately dangerous to life and health.
3. Class "C" - Has had the hazards or potential hazards eliminated or controlled through the use of preventative measures. A Class "C" is considered safe but may be entered only after the contractor has met the following requirements:
 - a. Report to the confined space location.
 - i. Test the confined space for the presence or absence of hydrogen sulfide gas, oxygen, and carbon monoxide.
 - ii. Approve entry based on testing results.
 - iii. Issue an approved confined space entry permit for each confined space entered.
 - b. Provide standby person for emergency purposes.
 - c. Have emergency retrieval equipment at the location. e.g. tripod, full body harness, retrieval line, etc.
 - d. Provide continuous forced air ventilation during the time work is being performed and at least 30 minutes prior to confined space entry.

E. Training and Responsibilities of Designated Employees

1. Qualified Person
 - a. Persons to authorize or in charge of entry will be trained in and perform assigned duties as follows:
 - Ensure that required procedures, practices, and equipment for safe entry are in effect before allowing entry.
 - Conduct appropriate atmospheric evaluation of the Confined Space via the use of testing equipment on which he or she has been trained to operate.
 - Determine that all requirements of the entry permit have been met before allowing entry.
 - Ensure that operations remain consistent with the terms of the entry permit at all times.
 - Cancel entry authorization at any time conditions are inconsistent with the guidelines of this procedure.
 - Terminate entry authorization upon completion of the work.
 - Prohibit unauthorized personnel from entry at all times.
 - b. Specific training/instruction for Qualified Persons will include:

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- Use of Monitoring Equipment
- Hazard Communication
- Respiratory Protection
- Permit Authorization and Termination
- Hazard Recognition
- Contacting Advanced Rescue Personnel

2. Confined Space Attendant

- a. Persons authorized as attendants will be trained in and perform assigned duties as follows:
 - Remain stationed outside the Confined Space at all times during entry operations.
 - Maintain an accurate count of all persons inside Confined Spaces.
 - Ensure that permits specifically required by certain projects will be used as required.
 - Recognize potential hazards and monitor conditions to ensure that a safe atmosphere remains.
 - Maintain continuous communication with authorized entrants.
 - Authorize evacuation of Confined Spaces when hazardous conditions or permit violations exist.
 - Prevent entry of unauthorized personnel.
 - Contact advanced rescue personnel if required.

b. Specific training/instruction for Confined Space Attendants will include:

- Hazard Communication
- Respiratory Protection
- Hazard Recognition
- Communication Techniques
- Basic Rescue
- Evacuation Authority

2. Authorized Entrants

- a. Employees who work as authorized entrants will be trained in and perform assigned duties as follows:
 - I. Be aware of Confined Space hazards that may be encountered.
 - II. Recognize hazard exposure symptoms.
 - III. Understand exposure hazards and their results.
 - IV. Maintain contact with the attendant.

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V. Recognize the need and initiate self-evacuation when necessary or when they perceive that danger is present.

- Hazard Recognition
- Communication Techniques
- Use of Personal Protection Equipment
- Self-rescue
- Hazard Communication

F. Permit Requirements

1. The Controlling Contractor will be responsible for ensuring the sub-contractor issues and is in compliance with the requirements of this program.
2. All employees will be required to work within the provisions outlined in Confined Space Entry Permit Form. All portions of the permit will be completed by the Qualified Person. The completed permit will be posted at the Confined Space entrance and will then become the responsibility of the attendant. Upon completion of the shift or the work (whichever is the first to occur), the attendant will sign the permit to indicate that all entrants have safely exited the Confined Space and return the permit to the Qualified Person for retention.
3. Upon placement of the permit, the attendant is responsible for control of the work area and has full authority to cease operations or terminate entry at any time. These actions will be reported to the Qualified Person immediately following their occurrence.
4. A blanket Confined Space Entry Permit may be requested for spaces opened for extended periods of time and in which permanent or temporary/portable ventilation equipment is utilized. Ventilation equipment should be capable of maintaining suitable atmosphere in the space when utilized.
5. The sub-contractor will submit a copy of the completed permit to the Controlling Contractor.

G. Rescue Operations

1. No employee is allowed to make an entry into a confined space for rescue purposes unless properly trained and equipped to do so. If no personnel are authorized for rescue entry, the contractor and/or Subcontractor shall secure outside assistance for rescue operations prior to entry into a confined space.

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CONFINED SPACE ENTRY PERMIT	
Date and Time Issued: _____	Date and Time Expires: _____
Job Site/Space I.D.: _____	Job Supervisor: _____
Equipment to be worked on: _____	Work to be performed _____
Stand-by Personnel: _____	
1. Atmospheric Checks: Time: _____	
Oxygen: _____ %	
Explosive: _____ % LFL	
Toxic: _____ PPM	
2. Tester's Signature _____	
3. Source Isolation (No Entry): N/A YES NO	
Pumps or lines blinded () () ()	
Disconnected, or blocked () () ()	
4. Ventilation Modification N/A YES NO	
Mechanical () () ()	
Natural Ventilation Only () () ()	
5. Atmospheric Check after isolation and ventilation:	
Oxygen _____ % 19.5 %	
Explosive _____ % LFL 10 %	
Toxic _____ PPM 10 PPM H2S	
Time _____	
Testers Signature _____	
6. Communication Procedures: _____ _____	
7. Rescue Procedures: _____ _____	
8. Entry, standby, and back up persons: YES NO successfully completed required training? () () Is it current? () ()	
9. Equipment: N/A YES NO Direct reading gas monitor tested () () ()	
Safety harness and lifelines for entry and standby persons: () () ()	
Hoisting Equipment: () () ()	
Communication line established: () () ()	
SCBA for entry and standby persons: () ()	
Protective Clothing: () () All Electric equipment listed	
Class I Division I, Group D and non-sparking tools: () () ()	
10>Periodic atmospheric tests:	
Oxygen _____ % Time _____ Oxygen _____ % Time _____	
Oxygen _____ % Time _____ Oxygen _____ % Time _____	
Explosive _____ % Time _____ Explosive _____ % Time _____	
Explosive _____ % Time _____ Explosive _____ % Time _____	
Toxic _____ % Time _____ Toxic _____ % Time _____	
Toxic _____ % Time _____ Toxic _____ % Time _____	

We have reviewed the work authorized by this permit and the information contained here-in. Written instructions and safety procedures have been received and are understood. Entry cannot be approved

if any squares are marked in the "no" column. This permit is not valid unless all appropriate items are completed.

Approved By: PRINT NAME SIGNATURE

Reviewed By: PRINT NAME SIGNATURE

THIS PERMIT IS TO BE KEPT POSTED AT THE JOB SITE. RETURN COPY TO SAFETY OFFICE FOLLOWING JOB COMPLETION.

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13. COMPRESSED GAS CYLINDERS

The purpose of this procedure is to prevent injury to personnel and damage to property caused by the mishandling of compressed gas cylinders. This procedure applies to all employees, contractors, and visitors who handle compressed gas cylinders.

A. Responsibility:

All Subcontractors will ensure that their affected employees are trained in the proper use and inspection of gas cylinders.

B. General Requirements

1. All cylinders will be securely anchored upright and stored in assigned places.
2. Never drop cylinders or permit them to strike each other.
3. Replace the valve caps on cylinders when regulators are removed. Cylinders will not be transported without valve caps in place.
4. Cylinders will not be used for rollers, supports, or any purpose other than to contain gas.
5. Keep sparks and flame away from cylinders. Never place or store cylinders near furnaces, boilers, or other high-temp sources.
6. All compressed gas cylinders shall be identified by a legibly-marked label. Do not accept for use any cylinder that is not identified by a legible label and notify shipping personnel to retrieve the cylinder.
7. Open cylinder valves slowly. Stand to one side of the glass-covered gauge faces when opening cylinder valves. Close cylinder valves when stopping work, moving cylinders, or when cylinders are empty.
8. Mark empty cylinders "EMPTY" or "MT". Ensure all valves are closed and caps installed.
9. Never tamper with safety devices on valves or cylinders.
10. Cylinders must be equipped with the proper regulators. Inspect all connections and seating surfaces when applying regulators.
11. Subcontractors are responsible for ensuring that all pressure regulators are inspected/tested.
12. Subcontractor shall maintain inspection/test records onsite.
13. Subcontractor will ensure the integrity of each cylinder.

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14. Cylinders must not be taken inside tanks or vessels where work is to be performed.

C. Special Rules For Oxygen Cylinders

1. Oxygen cylinders shall be kept clean and oil or grease prevented from contacting valves, regulators, gauges, fittings, hose lines, pipelines, blowpipes, and any connections.
2. Open the cylinder valve fully when cylinder is in use.
3. Never use oxygen as a pressure medium to blow out obstructed pipelines.
4. Hoses must be equipped with backflow controls and flame arrestors.
5. Oxygen cylinders in storage must be separated from fuel-gas cylinders by a minimum distance of 20 feet or by a 5-foot barrier having a fire rating of at least 30 minutes.

D. Special Rules For Acetylene Cylinders

1. Acetylene shall never be used at a pressure exceeding 15 pounds per square inch.

Do not open an acetylene cylinder valve more than one full turn; then, in case of fire, the valve can be closed immediately.

Move acetylene cylinders to open air away from possible sources of ignition if leak occurs that cannot be stopped.

4. Never test for acetylene leaks with an open flame. Use leak detector or soapy water.

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14. DRILLING AND BLASTING OPERATIONS

In order to minimize the risk of injury to employees or anyone on this site, the following conditions will set forth the requirements for drilling and blasting operations.

A. Scope

These requirements apply to all activities involving drilling, blasting and hauling of debris on this project.

B. Responsibilities

All Subcontractors shall be responsible for implementing the requirements of this plan and directing the activities of their employees and other sub- contractors to ensure compliance.

NOTE: Use of Personal Protective Equipment, i.e. hard hats, safety glasses and safety shoes, are required in all drilling and blasting areas.

C. Drilling

1. A competent person shall inspect all drilling and associated equipment prior to each use. Equipment defects affecting safety shall be corrected before the equipment is used.
2. The drilling area shall be inspected for hazards before the drilling operation is started.
3. Employees shall not be allowed on a drill mast while the drill bit is in operation or the drill machine is being moved.
4. When a drill machine is being moved from one drilling area to another, drill steel, tools, and other equipment shall be secured and the mast shall be placed in a safe position.
5. Blasting holes shall not be drilled through blasted rock (muck) or water.

D. Haulage of Debris

1. A competent person shall inspect haulage equipment before each shift.
2. Equipment defects affecting safety and health shall be corrected before the equipment is used.
3. Debris from all surrounding areas must be safely removed immediately after each blast.

E. Blasting - Use of Explosives

1. Only authorized and qualified persons will be allowed to handle and use explosives on this project.

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2. Smoking, firearms, matches, open flame lamps, and other fires, flame or heat producing devices and sparks shall be prohibited in or near explosive magazines or while explosives are being handled, transported or used.
3. No person shall be allowed to handle or use explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.
4. All explosives shall be accounted for at all times. Explosives not being used shall be kept in a locked magazine, unavailable to persons not authorized to handle them. Inventory and record of all explosives used must be kept onsite at all times. MONADNOCK shall be notified upon discovery of any loss, theft, or unauthorized entry into a magazine.
5. No explosives or blasting agents shall be abandoned.
6. No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.
7. Original containers, or magazines, shall be used for taking detonators and other explosives from storage magazines to the blasting area.
8. When blasting is done in congested areas or in proximity to a structure or highway, or any other installation that may be damaged, the blaster shall take special precautions in the loading, delaying, initiation, and confinement of each blast with mats or other methods so as to control the throw of fragments, and thus prevent bodily injury to employees.
9. Employees authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution including, but not limited to, visual and audible warning signals, flags, or barricades, to ensure employee safety.
10. Insofar as possible, blasting operations above ground shall be conducted between sunrise and sundown.
11. Empty boxes and paper and fiber packing materials, which have previously contained high explosives, shall not be used again for any purpose, but shall be destroyed by burning at an approved location.
12. Explosives, blasting agents, and blasting supplies that are obviously deteriorated or damaged shall not be used.
13. Delivery and issue of explosives shall only be made by and to authorized persons and into authorized magazines or approved temporary storage or handling areas.
14. Blasting operations in the proximity of overhead power lines, communication lines, utility services, or other services and structures shall not be carried on until the operators and/or owners have been notified and measures for safe control have been taken.

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15. The use of black powder on this project is prohibited.
16. All loading and firing shall be directed and supervised by competent persons thoroughly experienced in this field.

F. Transportation of explosives

1. Transportation of explosives shall meet the provisions of Department of Transportation regulations contained in 49 CFR Parts 171-179, Highways and Railways; and 49 CFR Parts 390-397, Motor Carriers.
2. Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver who is physically fit. He/she shall be familiar with the local, State, and Federal regulation governing the transportation of explosives.
3. No person shall smoke, or carry matches or any other flame-producing device, nor shall firearms or loaded cartridges be carried while in or near a motor vehicle or conveyance transporting explosives.
4. Explosives, blasting agents, and blasting supplies shall not be transported with other materials or cargoes. Blasting caps (including electric) shall not be transported in the same vehicle with other explosives.
5. Vehicles used for transporting explosives shall be strong enough to carry the load without difficulty, and shall be in good mechanical condition.
6. When a vehicle with an open body transports explosives, original manufacturer's container shall be secured to the bed to contain the cargo.
7. All vehicles used for the transportation of explosives shall have tight floors and any exposed spark-producing metal on the inside of the body shall be covered with wood or other nonsparking material, to prevent contact with containers of explosives.
8. Every motor vehicle or conveyance used for transporting explosives shall be marked or placarded on both sides, the front, and the rear with the word "Explosives" in red letters, not less than 4 inches in height, on white background. In addition to marking or placarding, the vehicle or conveyance may display, in a manner that will be readily visible from all directions, a red flag 18 inches by 30 inches, with the word "Explosives" painted, stamped, or sewed thereon, in white letters, at least 6 inches in height.
9. Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition. An Underwriters Laboratory-approved extinguisher of not less than 10-ABC rating will meet the minimum requirement. The driver shall be trained in the use of the extinguisher on his vehicle.

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10. Vehicles or conveyances carrying explosives, blasting agents, or blasting supplies, shall not be taken inside a building for repairs or servicing.
11. Every motor vehicle transporting explosives shall be attended to at all times. NOTE: Attended means the driver or authorized person is physically on the vehicle or can see the vehicle and reach it quickly without any kind of interference.

G. Storage of explosives and blasting agents.

1. Explosives and related materials shall be stored in approved facilities required under the applicable provisions of the Bureau of Alcohol, Tobacco and Firearms regulations contained in 27 CFR part 55; State and Local regulations.
2. Blasting caps, detonating primers and primed cartridges shall not be stored in the same magazine with other explosives or blasting agents.
3. Smoking and open flames shall not be permitted within 50 feet of explosives and detonator storage magazine.
4. Ground around magazines shall slope away for drainage. The land surrounding magazines shall be kept clear of brush, dried grass, leaves, and other materials for a distance of at least 25 feet.
5. Explosives and blasting agents storage area must be secured and inaccessible to unauthorized persons.

H. Blaster Qualifications

1. A blaster shall be able to understand and give written and oral orders.
2. A blaster shall be in good physical condition and not be addicted to narcotics, intoxicants, or similar types of drugs.
3. A blaster shall be qualified, by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives, and have a working knowledge of State and local laws and regulations which pertain to explosives.
4. Blasters shall be required to furnish satisfactory evidence of competency in handling explosives and performing in a safe manner the type of blasting that will be required.
5. The blaster shall be knowledgeable and competent in the use of each type of blasting method used. And the blaster must comply with all licensing requirements of the state.

I. Loading of explosives or blasting agents

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1. Procedures that permit safe and efficient loading shall be established before loading is started.
2. All drill holes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.
3. Tamping shall be done only with wood rods or plastic tamping poles without exposed metal parts, but nonsparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. Primer shall not be tamped.
4. No holes shall be loaded except those to be fired in the next round of blasting. After loading, all remaining explosives and detonators shall be immediately returned to an authorized magazine.
5. Drilling shall not be started until all remaining butts of old holes are examined for unexploded charges, and if any are found, they shall be refired before work proceeds.
6. No person shall be allowed to deepen drill holes, which have contained explosives or blasting agents. No explosives or blasting agents shall be left unattended at the blast site.
7. Machines and all tools not used for loading explosives into borehole shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within 50 feet of loaded holes.
8. No activity of any nature other than that which is required for loading holes with explosives shall be permitted in a blast area.
9. Holes shall be checked prior to loading to determine depth and conditions. Where a hole has been loaded with explosives but the explosives have failed to detonate, there shall be no drilling within 50 feet of the hole.
10. When loading a long line of holes with more than one loading crew, the crews shall be separated by practical distance consistent with efficient operation and supervision of crews.
11. No explosive shall be loaded or used underground in the presence of combustible gases or combustible dusts. And all blast holes in open work shall be stemmed to the collar or to a point, which will confine the charge.
12. Warning signs, indicating a blast area, shall be maintained at all approaches to the blast area. The warning sign lettering shall not be less than 4 inches in height on a contrasting background.
13. A borehole shall never be sprung when it is adjacent to or near a hole that is loaded. Flashlight batteries shall not be used for springing holes.

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14. Drill holes which have been sprung or chambered, and which are not water-filled, shall be allowed to cool before explosives are loaded.
15. No loaded holes shall be left unattended or unprotected. The blaster shall keep an accurate, up-to-date record of explosives, blasting agents, and blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

J. Inspection after Blasting

1. Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine.
2. Sufficient time shall be allowed, not less than 15 minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation, and in tunnels, after the muck pile has been wetted down.

K. Misfires

1. If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone.
2. No other work shall be done except that necessary to remove the hazard of the misfire and only those employees necessary to do the work shall remain in the danger zone.
3. No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole reblasted. If refiring of the misfired hole presents a hazard, the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.
4. If there are any misfires while using cap and fuse, all employees shall remain away from the charge for at least 1 hour. Misfires shall be handled under the direction of the person in charge of the blasting. All wires shall be carefully traced and a search made for unexploded charges.
5. No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved that work can proceed.

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15. EXCAVATIONS

Every Subcontractor performing excavation work on site must have a properly trained and designated competent person. Subcontractor shall maintain on site all required excavation documentation in accordance with the provisions of 29 CFR 1926 Subpart P. All such records shall be available for inspection upon request.

A. General Requirements

1. Utility companies and owners shall be contacted, advised of the proposed work, and asked to establish the location of the utility underground installations prior to the start of actual excavation
2. No employee shall be permitted underneath loads handled by lifting or digging equipment.
3. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling materials

B. Protection/Barricade

1. Excavations must be barricaded to alert pedestrians and vehicle traffic.
2. Spoil dirt may be used to barricade one side of an excavation.
3. The spoil pile must be at least three (3) feet high and also must be piled at least three (3) feet from the edge of the excavation.

C. Access/Egress

Access and egress must be provided for all excavations. Ladders shall be provided at intervals no greater than 25 feet. Ladders must extend at least three (3) feet above the top of the excavation and must be secured at top and bottom.

D. Fall Protection

1. Walkways shall be provided where employees or equipment are required or permitted to cross over excavations. Guardrails, which comply with 1926.502(b), shall be provided where walkways are 6 feet (1.8 m) or more above lower levels.
2. Adequate barrier physical protection shall be provided at all remote excavations. All wells, pits, shafts, etc., shall be barricaded or covered.
3. Upon completion of tasks, excavation must be back-filled.

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E. Sloping/Shoring

1. Excavations must be sloped or shored when deeper than five (5) feet.
2. A competent person must check all sloping prior to anyone entering the excavation. See Table (1) for slope requirements.
3. Sloping or benching for excavations greater than 20 feet shall be designed by a registered professional engineer. The approved contract drawing must be kept on site.

F. Inspections

1. The competent person shall conduct an inspection prior to the start of work and as needed throughout the shift.
2. Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, failure of protective systems, hazardous atmospheres, or other hazardous conditions.
3. Inspections shall also be made after every rainstorm or other hazard-increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.
4. Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

G. Water Accumulation

1. Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless adequate precautions have been taken to protect employees against the hazards posed by water accumulation.
2. If water is controlled or prevented from accumulating by the use of water removal equipment, a competent person shall monitor the water removal equipment and operations to ensure proper operation

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TABLE I
Maximum Allowable Slopes

Soil or Rock Type	Maximum Allowable Slopes (H : V)* For Excavations Less Than 20 Feet Deep**	
Stable Rock	Vertical	(90 Degrees)
Type A ***	3/4:1	(53 Degrees)
Type B	1:1	(45 Degrees)
Type C	1 1/2:1	(34 Degrees)

Notes:

* Numbers shown in parentheses next to maximum allowable slopes are angles expressed in degrees from the horizontal. Angles have been rounded off.

** Sloping or benching for excavations greater than 20 feet shall be designed by a registered professional engineer.

*** A short-term maximum allowable slope of 1/2H:1V (63 degrees) is allowed in excavations in type A soil that are 12 feet (3.67 m) or less in depth. Short-term maximum allowable slopes for excavations greater than 12 feet (3.67 m) in depth shall be 3/4H:1V (53 degrees).

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16. Excavating and Trenching - Adjoining Property

A. Scope and Application

Removal of rock or concrete by blasting and pile driving causes vibrations which may be sufficient to damage structures nearby, as may the removal of earth which results in the movement of bracing systems and underpinning, or soil consolidation resulting from lowering of water table, etc.

A review of the sub-surface conditions (determined from on-site borings) and the plans of existing buildings (where available) are necessary to evaluate lateral and vertical integrity. An inspection to evaluate the condition of adjoining/existing structures shall be completed by the Subcontractor prior to (and possibly after ceasing) operations.

B. The following shall influence the degree of inspection:

The distance of the structures from the hazard.

The severity of the hazard.

The general condition of the structures.

Requirements by local laws, contract and/or liability.

C. Four methods of inspection:

(Method used should be at the discretion of the Subcontractor/Sub-Subcontractor structural engineer.)

1. **Casual** – A visual inspection of the surrounding structures (limited to those portions readily available from the exterior) made by the Subcontractor Job Superintendent. This type of inspection is primarily to determine if a more in depth survey is needed.
2. **Detailed** – Representatives of MONADNOCK, the appropriate Subcontractor/Sub-Subcontractor and the neighboring property owner(s) noting the deficiencies informally.
3. **Photographic Survey** – Photographs or videos of the interior or exterior of the structure and adjoining properties shall be taken by a commercial photographer or video service. All photographs or videos shall be dated and made part of the permanent job records.
4. **A Complete Engineering Survey** – A consultant hired to completely detail the condition of the structures.

Where job operations such as pile driving and blasting may cause vibrations affecting the nearby structures it is required that vibration measurements be made by the Subcontractor, making data available to MONADNOCK. This will enable the job to monitor and set up procedures to keep the energy ratio of the vibrations at a safe level.

Where settlement of the nearby street, utilities and structures may occur because of excavation and foundation work, the streets, utilities and structures shall be regularly checked

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for vertical and horizontal movement and a log maintained by the Subcontractor. Any movement shall be investigated immediately.

All inspection reports shall be copied to Monadnock.

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17. CRANE OPERATIONS

All cranes must be inspected by qualified persons prior to being used on this jobsite. Affected contractors shall maintain a copy of annual inspection records of such cranes on the jobsite all the time.

A. Set Up

1. Ground/Crane Condition

- Cranes shall not be set on unstable ground, backfill or buried pipes.
- Cranes shall not be set up where the crane cannot be made level.

2. Overloading

- Do not use crane to lift more than the rated capacity.
- Load chart shall not be ignored/misinterpreted.
- If load computer is used, the computer shall be correctly programmed

B. Responsibilities for Crane Operations

Affected contractors/Subcontractors shall ensure that:

1. Personnel involved in maintaining, repairing, transporting, preparing, and assembling the equipment are well trained.
2. Employees clearly understand their responsibilities and the authority necessary to operate cranes safely.
3. Maintenance and inspection program is established and maintained through a written program or ensure that the crane owner has the program in place.
4. Ensure that site supervisors are aware of their responsibilities.
5. Crane and associated equipment are in accordance with the manufacturer's requirements.

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Crane Operators are responsible for:

1. Knowing the machine functions and limitations
2. Being familiar with crane operating manual
3. Understanding the crane's load chart
4. Inspecting and maintaining the crane regularly
5. Informing supervisor of problems, needed maintenance, or necessary repairs (in writing)
6. Completing inspections in accordance with the manufacturer's requirements
7. Being aware of site conditions that could affect crane operations
8. Finding out the weight of the load and where the load is to be placed
9. Ensuring adequate rigging
10. Considering all factors that may reduce cranes capacity
11. Knowing basic load rigging procedures
12. Shutting down and securing the machine when leaving unattended.

Subcontractor site supervisor is responsible for:

1. Supervising all work involving the crane, including planning meetings in advance of critical lifts.
2. Determining the correct load weight and radius
3. Ensuring the rigging crew is experienced and competent
4. Ensuring the load is properly rigged
5. Ensuring the signalmen are competent and capable of directing the crane
6. Designating signalmen and identifying them to the operator
7. Keeping the public and non-essential personnel clear of working radius
8. Ensuring that all safety precautions are taken when working in the vicinity of power lines.
9. Ensuring all personnel involved in the operation understand their job responsibilities and safety related aspects
10. Permits are correct and available on site.

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C. Pre-Job Planning Requirements

1. Operator – All crane operators shall be properly licensed to operate in the State or Commonwealth. Certification records shall be maintained on the job site by the Subcontractor and made available to the MONADNOCK on request.
2. Load charts - A legible load chart shall be provided and attached in a location accessible to the operator while at the control.

D. Inspections

1. The crane operator shall perform inspections on each crane, in accordance with the requirements of its manufacturer.
2. A thorough, annual inspection of hoisting machinery (cranes and derricks) shall be made by a Government or private agency recognized by the U.S. Department of Labor or Monadnock. The Subcontractor must post the most current inspection certificates in the cab or operator's station of the hoisting machinery and provide Monadnock, upon request, a copy of the inspection certificate results.
3. A qualified person shall inspect Cranes not in regular use.

E. Wire Rope:

1. Out of Service Criteria - Cranes with wire ropes that meet the following criteria shall be taken out of service:
2. In running ropes – six randomly distributed broken wires in one lay or three broken wires in one stand, in one lay
3. One outer wire broken at the point of contact with the core of the rope which has worked its way out of the rope structure and protrudes, or loops, out from the rope structure
4. Wear of one-third of the original diameter of outside individual wires
5. Kinking, crushing, bird-caging, or any other damage resulting in distortion of rope structure
6. Evidence of heat damage or reduction of nominal diameter from 1/64" to 3/32" depending on rope diameter

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18. MATERIAL AND PERSONNEL HOISTS

All hoists shall comply with the manufacturers' specifications and limitations applicable to their operation. Where manufacturers' specifications are not applicable, the limitations assigned to the equipment shall be based on the determination of the using Subcontractor's professional engineer competent in the field. Rated load capacities, recommended operating speeds, and special hazard warnings or instructions shall be posted on cars and platforms.

Following assembly or erection of hoists, and before being put into service, an inspection and test of all functions and safety devices shall be made by the Subcontractor. A similar inspection and test is required following any major alterations. All hoists shall be inspected at a minimum at 3-month intervals by the Subcontractor. Records shall be maintained at the site by the Subcontractor.

When hoist platform/cage is on upper level, first floor level shall be guarded to prevent entry of personnel or storage of material.

Material hoists shall conform to the regulations of ANSI A10.5 and personnel hoists to ANSI A10.4.

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19. HOUSEKEEPING

This procedure is designed to outline the project housekeeping requirements for all contractors in order to maintain a safe and clean work environment.

A. Introduction

All Subcontractors are required to maintain their respective work areas in clean, sanitary and orderly condition at all times.

B. Housekeeping

1. When the Subcontractor is responsible for housekeeping, he shall arrange for the removal of all scrap material generated during each project.
2. During the course of construction, renovation, alteration, or repairs, all construction debris shall be kept clear from all work areas and not be allowed to accumulate.
3. All materials shall be disposed of properly according to federal, state and local guidelines.
4. Containers shall be clearly marked for the contents to be disposed of. (e.g. oily rags, metal, paper waste, etc.)
5. Covers shall be provided for containers used to collect garbage, solvents and other flammable wastes, hazardous wastes such as acids or caustics.
6. Building materials shall be arranged such that they do not pose a hazard to personnel in or around the area.
7. Walking and working surfaces shall remain clear of materials and or debris. Cords and hoses must be out of walkways or elevated 7 feet above floor level.
8. Where responsible, the Subcontractor shall provide periodic cleanup during the day as necessary to provide working conditions that are clean, sanitary, orderly, and safe.

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C. Sanitation

1. Subcontractor shall ensure that there is adequate supply of drinking water for their employees.
2. Subcontractor shall provide single use cups.
3. Water containers must be tightly closed and equipped with a tap.
4. The water dispenser shall have the lid taped with the date and time the water was prepared.
5. Trash receptacle shall be provided near each water dispenser.
6. Water containers must be cleaned daily.
7. Controlling Contractor must provide sufficient toilet facilities for personnel onsite.

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20. HAZARD COMMUNICATION PROGRAM

Subcontractors involved with this project are required to obtain information on any chemicals that are intended to be used onsite, take steps to reduce exposures, substitute less hazardous materials, and establish proper work practices. These efforts will help prevent the occurrence of work-related illnesses and injuries caused by chemicals. Most chemicals/substances used in the workplace have some hazard potential, and thus will be covered by this requirement.

A. Written Program

1. Each Subcontractor, upon signing of contracts, will submit to Monadnock a written hazard communication program that addresses how information on hazardous chemicals will be provided to their exposed employees.
2. The written program must describe how the requirements for labels and other forms of warning, material safety data sheets, and employee information and training, are going to be met.

B. Identify Responsible Staff

Subcontractor must identify their employees who will be responsible for conducting Hazard Communication training on site.

C. Identify Hazardous Chemicals/Substances

1. Subcontractor must prepare a list of hazardous chemicals/substances they plan to bring to the site as part of the written hazcom program.
2. A copy of the list must be supplied to the Controlling Contractor.

D. Labels and Other Forms of Warning

1. All containers of hazardous chemicals must be labeled, tagged, or marked with the identity of the material and appropriate hazard warnings.
2. If the Subcontractor subsequently transfers the material from a labeled container to another container, the Subcontractor will have to label that container unless the material is for immediate use during the shift period.

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E. Material Safety Data Sheets

1. Subcontractor must have an MSDS for each hazardous chemical that they use on site.
2. Subcontractor shall use the information contained in the MSDS to design protective programs for their workers.
3. MSDS's must be readily accessible to employees when they are in their work areas during their work shifts.
4. Employees shall not use any chemicals for which the contractor has not received an MSDS. The MSDS provides information needed to ensure proper protective measures are implemented prior to exposure.
5. Copies of all MSDS must be furnished to the Controlling Contractor.

F. Employee Information and Training

Each employee who may be "exposed" to hazardous chemicals when working must be provided information and trained prior to initial assignment to work with a hazardous chemical, and whenever the hazard changes. "Exposure" or "exposed" means "an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g., accidental or possible) exposure."

In reviewing the written program with regard to information and training, the following items need to be considered:

1. Designation of person(s) responsible for conducting training;
2. Format of program to be used (audiovisuals, classroom instruction, etc.);
3. Elements of the training program;
4. Procedure to train new employees at the time of their initial assignment to work with a hazardous chemical, and to train employees when a new hazardous chemical is brought to site.

In general, the most important aspects of training required in this section are to ensure that employees are informed if they are exposed to hazardous chemicals, that they know how to read and use labels and material safety data sheets, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the contractor.

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G. Other Requirements

In addition to the above specific requirements, all Subcontractors shall ensure that their programs address the following:

1. Outline of methods the contractor will use to inform employees of the hazards of non-routine tasks;
2. Availability of the written program to employees and their designated representatives; and
3. Established procedures to evaluate program effectiveness.

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21. ELECTRICAL SAFETY

Subcontractor shall ensure that electrical equipment is free from recognized hazards that are likely to cause death or serious physical harm to employees. Electrical equipment and installations used to provide electric power and light at the jobsite shall meet all OSHA and NEC regulations.

A. Examination, Installation and Use of Equipment

Before installation or use, electrical equipment shall be examined to ensure that its operation shall not constitute safety hazard to employees. Such equipment shall be examined for the following characteristics:

1. Suitability for installation and use in conformity with the provisions of all applicable regulations. Suitability of equipment for an identified purpose may be evidenced by a listing, by labeling, or by certification for the identified purpose.
2. Mechanical strength and durability. For parts designed to enclose and protect other equipment, this includes the adequacy of the protection thus provided.
3. Electrical insulation.
4. Heating effects under conditions of use.
5. Arcing effects.
6. Classification by type, size, voltage, current capacity, and specific use.
7. Other factors that contribute to the practical safeguarding of employees who use or are likely to come in contact with the equipment.

B. Guarding

Live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact. Guarding of live parts shall be accomplished as follows:

1. Location in a cabinet, room, vault, or similar enclosure accessible only to qualified persons.
2. Use of permanent, substantial partitions or screens to exclude unqualified persons.
3. Location on a suitable balcony, gallery, or platform elevated and arranged to exclude unqualified persons.
4. Elevation of eight feet or more above the floor.

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5. Entrance to rooms and other guarded locations containing exposed live parts must be marked with conspicuous warning signs forbidding unqualified persons to enter.
6. Electric installations that are over 600 volts and that are open to unqualified persons must be made with metal-enclosed equipment or enclosed in a vault or area controlled by a lock. In addition, equipment must be marked with appropriate caution signs.

C. Grounding of Equipment Connected by Cord and Plug

All non-current carrying parts of electrical equipment must be grounded or have an approved double-insulated setup. Grounded circuits must have enough capacity to carry all of the currents likely to be imposed upon it.

D. Safety-Related Work Practices

Protection of Employees

1. Subcontractor shall determine before operations start if there is any energized equipment or electrical circuit in the work area that might have risk to the worker. Equipment and conductors that must be de-energized shall be identified to MONADNOCK Project Manager who will authorize de-energizing the Equipment under the Lockout/Tagout procedure/system. Subcontractor shall use the project Lockout/Tagout procedure and strictly adhere to these requirements. MONADNOCK will monitor adherence to the procedures on a regular basis.
2. Where the exact location of underground electric power lines is known, employees using jack hammers or hand tools that may contact a line must be provided with insulated protective gloves.
3. Even before work is begun, the Subcontractor must determine by inquiry, observation, or instruments where any part of an exposed or concealed energized electric power circuit is located. This is necessary because a person, tool or machine could come into physical contact with the electric power circuit.
4. Subcontractor shall advise their employees of the location of such lines, the hazards involved and protective measures to be taken as well as to post and maintain proper warning signs.

E. Passageways and Open Spaces

Subcontractor shall provide barriers or other means of guarding to ensure that workspace for electrical equipment will not be used as a passageway during the time when energized parts of electrical equipment are exposed. Walkways and similar working spaces must be kept clear of electric cords.

F. Lockout and Tagging of Circuits

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Subcontractor shall place locks and tags on controls that are to be deactivated during the course of work on energized or de-energized equipment or circuits. Equipment or circuits that are de-energized shall be rendered inoperative and have locks and tags attached at all points where such equipment or circuits can be energized.

G. Testing

1. All electrical work, installation and wire capacities shall be in accordance with the pertinent provisions of the National Electrical Code, ANSI and OSHA standards.
2. All tools, cords and power sets shall have an assured equipment inspection program maintained on a quarterly basis. The color codes for identifying inspected and tested equipment on the project are:

January, February, March	White
April, May, June	Green
July, August, September	Red
October, November, December	Orange

NOTE: The cycle of colors repeats annually.

3. Portable tools will have the appropriate color code affixed to the male (plug) end. Extension cords will have the appropriate color code affixed to both ends (plug and receptacle). The previous quarter's color code will be removed to avoid confusion.
4. All electrical tools and extension cords found to be defective (examples: missing or broken ground pins, exposed internal conductors), etc.) will be immediately destroyed by cutting off the plug end.

H. Temporary Wiring

1. All necessary open wiring must be made inaccessible to unauthorized employees and visitors. Lighting on barricades, fences, or sidewalk coverings shall be encased in metal raceways. Temporary lighting must have guards to prevent accidental contact with the bulb unless the bulb is deeply recessed in the reflector. Temporary lighting shall not be suspended by the cord unless the fixture was specifically designed in that manner, as with trouble lights. Portable electric lighting used in moist or other hazardous locations such as drums, tanks, vessels, bins, bunkers, etc. shall be operated at a maximum of 12 volts (non-explosive).
2. Extension cords used with portable tools must be of a heavy duty 3-wire type. Flat extension cords are prohibited. Damaged electrical cords will not be used.

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3. Where extension cords will be suspended seven feet (7') above finish floor or work platform. Extension cords will not be fastened with staples, hung from nails, or suspended by non-insulated wire.
4. All temporary power panels shall have covers installed at all times. All open or exposed breaker spaces shall be adequately covered or labeled.
5. All electrical equipment and wiring in hazardous locations must conform with the National Electric Code standards. The frames of all cutting, welding (arc, heli-arc, gas-plasma arc) machines shall be grounded.
6. Fish tapes or lines made of metal or any other conductive material are prohibited. Nonconductive tapes and lines will be used in their place.
7. All temporary wiring shall be effectively grounded in accordance with the National Electric Code (Articles 305 and 310). All wiring used for temporary lighting shall be non-metallic sheathed cable (NM) or the equivalent as approved by Monadnock .

I. Ground-Fault Circuit Interrupters

1. Subcontractor shall use approved ground-fault circuit interrupters for all 120-volt, single-phase, 15-and 20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure, and which are in use by their employees.
2. Receptacles on the ends of extension cords are not part of the permanent wiring and, therefore, must be protected by GFCI's whether or not the extension cord is plugged into a permanent wiring.
3. These GFCI's monitor the current-to-the-load for leakage to ground. When this leakage exceeds $5 \text{ mA} \pm 1 \text{ mA}$, the GFCI interrupts the current. They are rated to trip quickly enough to prevent electrocution.
4. Subcontractor shall have in place approved program for testing GFCI's. All records shall be made available for inspection at any time.
5. This protection is required in addition to, not as a substitute for, the grounding requirements of OSHA safety and health rules and regulations as specified in 29 CFR 1926.

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22. ELECTRICAL WELDING

A. Scope and Application

There are a number of hazards connected with electric or arc welding, but they can be safely handled when ordinary precautions are taken.

B. General Requirements

1. The frame of a portable welding machine operating from an electric power circuit shall be grounded. Switching equipment for shutting down the welding machine shall be provided on or near the welding machine.
2. The electrode holder and connecting cable shall be fully insulated. Light holders shall not be used for heavy work, and welders shall avoid standing on damp or wet surfaces while welding. All equipment shall be checked regularly to make certain that electrical connections and insulation on the holders and cable are in good order. Cables shall be kept dry and free from oil and grease. They shall be arranged in such a manner that they do not lie in water, in oil, in ditches, or on bottoms of tanks. Electrical repairs and maintenance work on welding machines shall be done by a certified electrician. Electric stubs shall be placed in containers provided by the Subcontractor for this purpose.
3. Where welding or cutting has to be done in the vicinity of combustible material, special precautions shall be taken to make certain that sparks do not reach such material and start a fire. If the work cannot be moved, exposed combustible materials shall be covered with fire retardant material or sheet metal during welding operations. Tanks, drums, and pipe lines which have contained flammable liquids shall be cleansed of all solid or liquid flammable material and purged of all flammable gases and vapors before welding operations are started.
4. Wood floors shall be swept clear before welding or cutting operations are started.
5. Portable hand-operated 20# ABC fire extinguishers shall be kept close at all times.
6. Leads shall not be wrapped around any gas cylinders or fuel tanks at any time.
7. Welders shall be taught to keep welding cables in an orderly fashion and away from places where it could cause a stumbling hazard or become damaged. Where possible, it shall be strung overhead high enough to permit free passage of vehicles and persons.

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3. The Subcontractor shall barricade or isolate the area below any welding operation to prevent other trades or the public from being exposed from falling spark or slag. Proper signage shall also be put into use. The Subcontractor shall provide a fire watch throughout the operation and at least one (1) hour after the operation is completed.

Reference: Occupational Safety and Health Administration, Safety and Health Regulations for Construction, Subpart J, Paragraph 1926.351, ANSI

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23. LOCKOUT AND TAGOUT

This procedure establishes the minimum requirements for the isolation of energy sources to ensure the safety and health of employees where unexpected start-up or release of stored or residual energy could cause injury. The following principles must apply to energy isolation tasks to ensure an appropriate level of safety and compliance with Safety Standards.

A. Lockout

1. Only individually keyed locks shall be used.
2. A lockout hasp that allows the use of more than one lock may be needed.
3. A piece of chain or cable may be necessary to complete a lockout on some valves or controls and shall be used wherever needed.
4. When voltage exceeds 600 volts, components must be grounded.

B. Danger Tags

1. Danger tags, on the spot warning of dangerous conditions, shall conform to OSHA specification. Note: The danger tags are to be used for lockout purposes only.
2. Tags will be supplied by the contractors and shall be clearly marked to show their purpose.

C. Procedure

If device, valve, switch, control or piece of equipment is locked out, a danger tag shall be attached. Note: No device, valve, switch, control or piece of equipment shall be operated with a danger tag and/or lockout attached regardless of circumstances!

Subcontractor is required to check, lock or tag all systems prior to any work. If any of the above methods shows failure of the lockout, work shall stop and the superintendent must be notified.

1. Panel Boards (switch gear, etc.)
 - a. Where placing of lock is not feasible, the circuit conductor will be disconnected from the breaker and tagged out.
 - b. The panel cover must be of the type that shall cover all breakers when closed and must be equipped with a fastener in order to secure a lock to prevent the panel door from being opened.

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- c. If the panel cover is of a type that cannot be locked closed, a cover shall be secured over the panel cover and be locked, closed and tagged while any work is being performed on any of those circuits.

Note: If the above cannot be accomplished, each circuit shall be tagged out as prescribed and an employee shall stand by the panel board to prevent breakers from being tampered with. This physical presence shall be assigned daily until the work is complete.

2. All danger tags shall be dated and signed by the employee who is working on the system. Also, the intended work and equipment for which the tag has been placed must be shown.
3. If employees of more than one contractor or crew are to work on a system, circuit, machinery, or component, the lead man from the craft shall place his or her individual lock and tag, and verify that the system, circuit, machinery or component being tagged, is indeed the system that is to be worked on.
4. Only the person who placed the lock and tag shall remove it without special authorization from the contractor's safety representative.
5. If the lock must remain after one shift, the incoming lead person will assume the responsibility of securing a new issue lock and tag. The system tagged shall be secured until all work is accomplished.
6. Any employee(s) or person(s) found to have removed another's lock and/or tag without authorization will be removed from the project.

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D. Operating Equipment

All systems covered under this section (e.g., electrical, mechanical, or others), are considered to be systems in the care/custody/control of the Controlling Contractor

Subcontractor's Responsibility:

- a. Subcontractor shall ensure that fuses and breakers have been removed, when applicable.
- b. Subcontractor shall tag, lock and try system to ensure that the system cannot be accidentally re-energized.

E. Lock Cutting/Removal

In the event it becomes necessary to remove an employee's lock, due to his/her absence from the project with a family emergency, or sudden illness, the following procedure shall be strictly adhered to.

- a. The employee's immediate supervisor shall be contacted and informed of the reason for the request.
- b. Alternatives shall be considered, for example, rescheduling the work if possible. The contractor's safety representative must take precautions to ensure the safety of all employees in the affected work area.

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24. FALL PROTECTION

A. Scope and Application

All Subcontractors are required to wear safety harnesses when working on swing scaffolds or hydraulic boom lifts when working above the protection system at floor openings, unprotected perimeters, and whenever a fall of more than 6 feet could occur.

Lifelines shall be a minimum of 3/4" manila or equivalent secured above the point of operation to an anchorage or structural member capable of supporting a minimum of 5,000 pounds.

Lanyards shall be a minimum of 5/8" nylon or equivalent with a shock absorbing system and a maximum length to provide for a fall of no longer than 6 feet. The rope shall have a nominal breaking strength of 5,000 pounds.

There will be a 6'-0" positive fall protection rule on all projects. This means the use of guard rail, safety harness with a personal fall protection device, or safety net whenever ANYONE is working over 6'-0" except as noted below.

Roofing and leading edge work may require that fall protection be provided by means of a trained full time safety monitor in conjunction with other measures provided for in 29 CFR 1926.500-502 of the Occupational Safety and Health Administration regulations if other positive means are deemed to be infeasible by the employer and agreed upon by MONADNOCK project management. These are the only cases whereby a safety monitor system meeting or exceeding Federal OSHA regulations will be permitted.

During scaffold erection and dismantling the designated competent person overseeing the operation shall determine the feasibility of positive fall protection. If it is deemed that positive fall protection is infeasible, the competent person shall put a fall protection plan in writing to meet Federal OSHA requirements and submit it to MONADNOCK project management for review prior to commencing the operation.

The 6-foot fall policy does not apply to moving up and down ladders. However, when working from ladders, and an individual's work requires him/her to lean out over the side-rails of the ladder, positive fall protection utilization is mandatory.

Steel erectors and metal deck installers are also required to utilize 100% positive fall protection at all times.

Double lanyards, nets, guardrails, or other means shall be used to maintain the 100% positive six-foot fall protection. The Subcontractor, regardless of tier is solely responsible for the development, implementation, and enforcement of this policy.

MONADNOCK has Zero Tolerance for anyone or any company not abiding by this policy and offenders shall be subject to immediate dismissal from the project. The Subcontractor shall also be subject to dismissal from the project.

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25. PROTECTION OF OPEN-SIDED FLOORS/DECKS & OPENINGS

a. Scope and Application

Falls from heights and materials falling from floors and decks of structures during construction are not frequent but are usually severe.

Frequently, railings and covers shall be moved in order for material to be hoisted or to perform other work and then replaced. In either case, procedures and designs to facilitate swift and safe removal and replacement shall be developed during pre-job or pre-operational planning and strict enforcement of those procedures required. 100% positive fall protection is required and must be maintained during the installation and removal of these devices.

The use of metal banding or chains (except when furnished by the manufacturer of the equipment) is prohibited as perimeter or other fall protection.

b. Floor and Roof Openings

Floor and roof openings shall be protected by a standard guardrail, midrail and toeboard or cover and left in place until permanent protection is in place or Temporary Certificate of Occupancy had been obtained and turned over to Owner. All "skylights" shall be protected in the same manner.

c. Floor and Roof Opening Covers

Covers shall support without failure at least twice the weight of the Subcontractors, equipment, and materials that may be imposed on the cover at any one time. All covers shall be secured so as to prevent displacement and marked with the words "hole" or "cover".

d. Standard Railing

The top edge height of a top rail shall be 42 inches plus or minus 3 inches above the walking/working level.

Note: When Subcontractors are using stilts, the top height of the top rail shall be increased an amount equal to the height of the stilts.

Midrails shall be installed between the top rail and the walking/working surface at a height of 21 inches, or half the overall distance.

Toe boards shall be a minimum of 3-1/2 inches in vertical height with only a quarter inch clearance off the floor. There shall be no opening greater than one inch between toe board members.

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The top rail shall have a breaking strength of 200 lbs. applied within two inches of the top edge, in any outward or downward direction at any point along the top edge.

Midrails members shall be capable of withstanding, without failure, a force of at least 150 pounds applied in any downward or outward direction at any point along the midrail. Additional midrail may be required if the top rail is greater than 45 inches in height.

Toe boards shall be capable of withstanding, without failure, a force of at least 50 pounds applied in any downward or outward direction at any point along the toe board.

For wood railings, the posts shall be at least 2" x 4" stock spaced not more than 8 feet apart. The top rail shall be of 2" x 4" stock, and the intermediate rail shall be at least a one by six-inch board. Toe boards may be constructed of 3-1/2 inch board. No double-headed nails are to be used in the construction of these railings.

For pipe railings, posts, top rails and intermediate railings shall be at least 1-1/2 inch nominal diameter (schedule 40 pipe) with posts spaced not more than 6 feet apart on centers.

For structural steel railings, posts, top rails and intermediate rails shall be at least 2" x 2" x 3/8" angles, with posts spaced no more than 6 feet apart on centers.

When wire rope is used for guardrails, the cables must be 1/4" nominal wire rope. When wire rope is used for top rails it shall be flagged at no more than six-foot intervals with highly visible materials.

Posts shall not be more than 8 feet on center. For cable safety railings, cables shall be looped and triple clamped at the connecting points.

AT NO TIME WILL ANY GUARDRAIL BE USED AS A HORIZONTAL ANCHORAGE FOR PERSONAL FALL ARREST EQUIPMENT UNLESS SPECIFICALLY DESIGNED AND MAINTAINED FOR THIS PURPOSE.

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26. SAFETY SIGNS AND BANNERS

A. Scope and Application

Warning, Danger, No Trespassing and other signs, correctly posted, help to protect the public and Subcontractor employees from Incidents and incidents.

Barricade tape is to be used for a visual warning only. It shall not be used as physical protection for floor edges, roof edges, floor openings, etc. For physical protection, barricades capable of supporting 200# lateral force must be erected

Listed below are various types of barricade tape and their proper usage.

B. BARRICADE TAPE PROGRAM

1. Yellow/Black Caution Tape

This tape shall be used to warn individuals of a hazard that can be seen and avoided. Personnel may enter this type of barricade if they are wearing the appropriate required personal protective equipment. Personnel may enter without permission. This barricade tape shall be used for, but not limited to the following:

1. General material storage area.
2. General work area.
3. Identification of slip/trip hazards.

2. Red "Danger" Tape

This tape shall be used to identify areas where entry of employees is restricted due to the nature of the hazard. No one may enter this area without first obtaining permission from the Subcontractor responsible for erecting the barricade. This barricade tape shall be used for, but not limited to the following:

1. Around counterweight of equipment.
2. Overhead works where materials may fall to lower levels.
3. High-pressure water cleaning, sand blasting, etc.

C. ON HAND SUPPLY

1. Proper signs shall be posted and maintained by Subcontractor in good condition wherever hazardous conditions exist and a sufficient supply of signs shall be kept on hand for placement as hazards develop. Additional Subcontractor posting requirements are found OSHA Standard 29CFR1926.200. Such requirements include but are not limited to posting for lasers, powdered actuated tools, and overhead hazards.

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27. HOT WORK

This procedure establishes the safe work practices to be used when performing hot work on the project. Hot work is to be defined as an open flame, welding arc, non-explosion proof electrical tools or equipment and any heat source capable of causing ignition.

A. Responsibilities

Each Subcontractor shall insure that all necessary safeguards, in addition to the minimum requirements, are followed. Each Subcontractor shall insure that all personnel involved with welding, burning, or other types of hot work, are fully trained in all procedures.

1. Supervisor and Foreman – Supervisor and foreman responsibilities shall include exercising rigid control over all operations performed by his personnel, assuring that no operation is started until all the necessary safeguards are in effect, and that a signed permit has been obtained when required.
2. Craftsmen – The responsibility of the craftsmen include carrying through the operation safely, working only with the approval of his foreman or supervisor, and continuing only as long as conditions remain safe.
3. Firewatch – Firewatch responsibilities include: being trained in the use of fire extinguishing equipment, being familiar with facilities for sounding an alarm in the event of fire, watching for fires in all exposed areas, attempting to extinguish the fire in the early stages, and sounding the alarm if the fire cannot be extinguished. There is a thirty-minute firewatch beyond the completion of hot work.

B. Conditions

1. Welding and cutting shall not be performed when the atmosphere is flammable, or when the presence of flammable compounds presents a hazard.
2. All combustible material in the immediate area must be either removed or protected from welding or cutting operations, and a permit may be needed.
 - a. Where objects to be welded or cut are movable, they must be moved to a safe location.
 - b. Where objects to be welded or cut cannot be moved from the area, all fire hazards in the vicinity that are portable shall be moved to a safe distance.
 - c. Where objects to be welded or cut are not movable, and where fire hazards are not movable, protective flameproof blankets or shields shall be used to insure that no spark splatter or molten metal can cause fire damage or injury to personnel, equipment or combustible materials. (PERMIT REQUIRED)

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C. Fire Extinguishers

Fire extinguishing equipment shall be stationed close to the work area, ready for use where any welding or cutting is being performed.

D. Firewatch

Firewatch shall be required whenever welding or cutting is performed in locations where any of the following conditions exist:

1. Combustible materials are closer than 35 feet to the point of operation.
2. Combustibles are easily ignited by sparks.
3. Wall or floor openings within a 35-foot radius expose combustible material in adjacent area including concealed spaces in walls or floors.
4. Combustible materials are adjacent to the opposite side of metal partitions, walls, ceilings or roofs and are likely to be ignited by conduction or radiation.
5. Anywhere outside of fenced-in area.

E. Permit System

1. Welding, burning or open flame permits may be required whenever welding and burning operations are required which can cause fire, damage or injury to personnel, equipment or combustible materials.
2. Welding, Burning or Open Flame Permits are numbered and controlled documents. Permits may be issued to the Subcontractor by the Controlling Contractor. It shall be the Subcontractor's responsibility to instruct its employees in the proper use of the permit tags.
3. When daily permits are required, (copy of "Hot Work Permit" can be found in section 40 of this document) they will be obtained by the superintendent or foreman of the welder, and posted in a conspicuous place near the work.
4. If the conditions under which the permit was issued change, so that the hazards of the work increase, the workers shall take corrective action or halt operations until the site is re-evaluated by the permit issuer.